

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

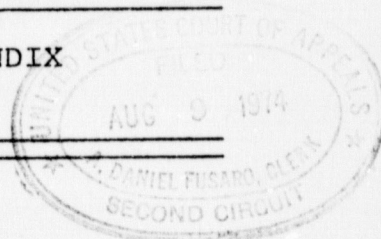
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. S(2)--Pages 116 to 265

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United States of America

v.

73 Cr. 1099

Carmin Tramunti, et al.,

January 10, 1973
10:15 a.m.

(Hearing resumed.)

THE COURT: Is the government ready?

MR. PHILLIPS: Yes, your Honor.

THE COURT: Is the defense ready, Mr. Lopez?

MR. LOPEZ: Yes, your Honor.

Good morning.

THE COURT: Good morning.

One minor housekeeping detail. I received a report on the physical examination of Frank Pellegrino.

Mr. Fortuin, was a copy of this report given to Mr. Rochman?

MR. FORTUIN: Yes. I spoke to him on Monday and he agreed I could mail him a copy, which I did.

THE COURT: All right. The report will be made part of the file in this case.

A question was raised yesterday and I indicated

I would sleep on it and that is the question as to whether the other defense counsel other than Mr. Lopez could actively participate in cross-examination of the government's witnesses.

My ruling remains the same. I will not permit it.

However, after each government witness counsel have had the opportunity to discuss the testimony with Mr. Lopez and I will continue to do that.

Is there anything else?

MR. ROSENBERG: I have an exception to the Court's ruling.

THE COURT: Sure. I don't think it is necessary, but you have one.

MR. ROSENBERG: Right.

MR. LOPEZ: Your Honor, I think I should advise, if your Honor thinks it proper, it will not be necessary during the course of any of these proceedings, including the trial, that any of defense counsel take exceptions to the Court's rulings, and I will advise them not to do so.

THE COURT: The only time you have to, Mr. Lopez, is on the charge.

MR. LOPEZ: Right.

THE COURT: Yes?

MR. ELLIS: Your Honor, has any decision been made as to the matter of further particulars?

THE COURT: Counsel, I have been working hard. I hope by the end of the lunch period you will have a decision, each and every one.

MR. ELLIS: Yes, your Honor.

I would also like to call to the Court's attention that an associate from my office has been listening to tapes in Mr. Phillips' office and she advised me that that may run into the week-end.

If your Honor decides to grant those further particulars we will be getting that information the very eve of trial.

THE COURT: Hopefully today. That's all I can offer.

Where is the witness?

MR. LOPEZ: In the witness room, I think.

...

PETER PALLATRONI, resumed;

THE COURT: You recall yesterday you were put under oath. That oath continues today. You understand?

THE WITNESS: Yes, your Honor.

THE COURT: Go ahead, Mr. Lopez.

MR. LOPEZ: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. LOPEZ:

Q Agent Pallatroni -- did I pronounce your name correctly?

A Yes, sir.

Q -- have you prepared any reports in connection with this case, in connection with the seizure of February 3, 1972?

A In connection with the activities of February 3rd, I don't believe so, sir.

Q Have you given testimony before any grand jury, state or federal, in relation to this case?

A No, sir. The only testimony I have given regarding this case--

THE COURT: Wait a second. When you are talking about this case -

MR. LOPEZ: Of February 3rd.

THE COURT: All right.

MR. LOPEZ: I'm sorry.

Q Let me be a little bit more specific.

In relation to the suppression issue, February 3, 1972, have you given any testimony before any investigative body or any grand jury, whether it be federal, state or city, in relation to this case?

1
2 A My only testimony, sir, occurred yesterday.

3 Q And I am correct in stating that you have not
4 given any testimony before the Special Prosecutor's office
5 grand jury in Supreme Court, New York County, Mr. Nadjari's
6 office, as it is commonly called.

7 THE COURT: I would assume that that is included.

8 Q Is that correct, sir?

9 A That's correct. I have not.

10 Q You have discussed this case with a number of
11 people in the United States Attorney's Office in relation-
12 ship to your testimony here today, is that correct?

13 A I did have a pretrial conference with Mr. Phillips,
14 yes, sir.

15 Q At that pretrial conference Officer Reilly was
16 also present, is that correct?

17 A Not for the entire conference, sir.

18 Q But for portions of it, isn't that correct?

19 A Yes, sir, that would be correct.

20 Q And your testimony, the testimony that you have
21 offered here yesterday, you in part at least gave in the
22 presence of Officer Reilly, is that correct?

23 A As far as Officer Reilly was on the scene on
24 the evening of February 3, 1972, yes, sir.

25 THE COURT: I think the problem was in the framing

1
2 of the question.

3 When you were having discussions with Mr. Phillip
4 Officer Reilly was present, right?

5 THE WITNESS: For a portion of the time, your
6 Honor, yes, sir.

7 THE COURT: At that time you discussed the events
8 of February 3, is that correct?

9 THE WITNESS: That's correct, your Honor.

10 THE COURT: And those events are the same events
11 that you testified to yesterday, right?

12 THE WITNESS: That's correct.
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Q And you participated in that conversation, isn't that correct? You participated, you spoke with the U.S. Attorney?

A That's correct.

Q And Reilly at times spoke, so all three or four of you, whoever was present, discussed the case together, is that correct?

A That's correct.

Q And your memory was refreshed; isn't that correct?

A To some degree, yes, sir.

Q And let me ask you. Officer Reilly, is he still under your command?

A No, sir, he is not.

Q All right.

Now, let's go to the information leading up to February 3rd, 1972. In other words, you recited some information yesterday that you were aware of prior to the actual seizure on February 3rd, 1972, isn't that correct?

A Yes, sir.

Q Now, this information did not come to you directly. It came to you, part of it at least, through other people, is that correct?

A I would consider that directly, but the answer to

1
2 your question is yes. .

3 Q Now, you mentioned, let's take them incident by
4 incident -- you mentioned something that had happened at
5 the Cottage Inn on September 19, 1971, is that correct?

6 A Yes, sir.

7 Q The information that you received in relationsh
8 to the Cottage Inn came from Detective Spurdis at the tim

9 A That's correct, sir.

10 Q You yourself of your own knowledge, you were
11 not present; you received this information directly from
12 Detective Spurdis, is that correct?

13 A That's correct, sir.

14 Q And he told you what had happened more or less
15 on September 7, 1971, isn't that correct? He had told you
16 what he had overheard on September 7, 1971?

17 A If my memory serves correctly, sir, the date was
18 September 2nd.

19 Q September 2nd, 1971, isn't that correct?

20 A That's correct.

21 Q All right.

22 Now, when you spoke about John Doe No. 3, no spe
23 cific name was given and he was just identified as John Doe
24 No. 3 at the time, is that correct?

25 A That's correct, sir.

Q Now, you had also received, prior to February 3rd, 1972, certain other information, is that correct, about one Facchiano, is that correct?

A That's right.

Q Can you tell this Court of your own knowledge if Vincent Papa ever knew Facchiano, of your own knowledge?

A Yes, sir. If you give me a second to refresh my memory, I think I could tie that together.

Q Well, but of your own knowledge?

A Yes, sir. It is of my own knowledge.

Q That they were together in the presence of each other?

A Well, if you will hear me out perhaps you will understand me.

Q Yes, surely.

A I was a young agent at the time, and I believe it was in 1967, the month I can't recall. At that time I was conducting a surveillance of two individuals in the Bronx. One was Frank Facchiano, another individual by the name of Edwin Cola, who had a conviction at the time for violation of the Federal Narcotic Laws.

On this occasion I followed these gentlemen to the area of Steinway Street in Queens. I don't remember the

1
2 cross street but it was right by, I believe, the RKO-Stein
3 and they met an unidentified male there and they were in
4 animated conversation, their hands going, et cetera, and
5 during the time up to this time I knew very little about
6 Vincent Papa.

7 I observed the car circling the neighborhood, and
8 it circled a number of times and I took note of it. I got
9 a good look at the driver, and it looked like to me he
10 kept looking at these three people on the sidewalk in con-
11 versation.

12 Q This was in 1967, is that correct?

13 A Yes, sir, it was.

14 Q All right.

15 A And once their conversation terminated, I went
16 back to the-- I discontinued surveillance.

17 The following day I investigated the license plat
18 and it was registered to, I don't recall if it was Vincent
19 Papa or somebody in the Papa family, at the address in
20 Astoria, and at that time I obtained a photograph of Mr.
21 Papa and was able to identify the driver of that car as
22 Vincent Papa.

23 Q So that is, what you have related to us now is
24 the basis of the relationship that you have told us about
25 between Facchiano and Papa dated back to 1967, is that

correct?

THE COURT: Based upon his personal knowledge.

Q Of your personal knowledge, based upon your personal knowledge, is that correct?

A Yes.

Q All right. Let's take the other person that you mentioned, Panica.

Based on your personal knowledge, what relationship can be established between Papa and Panica?

A On my personal knowledge, in the 50s they were closely associated in the trafficking of narcotics in the Queens area.

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Pallatroni-cross

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Q So this is what your information is: that in 1950 Panica and Papa had relationships in narcotics; is that correct?

MR. PHILLIPS: In the 1950's?

MR. LOPEZ: Yes.

MR. PHILLIPS: I thought you said 1950, singular.

Q And in 1967, there was this meeting that you observed, or whatever it was that you observed as a conversation; is that correct?

A I called it a meeting, sir, yes.

Q Let's take Frank Facchiano. You told us he had been arrested around this time in 1972; is that correct?

A In January of 1972, sir.

Q Whom was he arrested with?

A Pardon?

Q Whom was he arrested with?

A He was arrested alone.

Q Was he arrested with a George Rossi?

A No; he was not.

Q Well, was there an indictment with George Rossi and Frank Facchiano that you know of?

A Yes.

Q When was that?

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UNITED STATES COURT HOUSE

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THE COURT: The date or the indictment?

Q (Continuing) The date of the happening.
Whatever you can give us.

A You asked me who Frank Facchiano was arrested with. In January of 1972, he was arrested by himself. He was alone.

Q I see. Was he later joined in an indictment by other co-defendants?

A Yes; he was.

Q Whom was he joined with?

A George Rossi.

Q Anybody else?

A Not that I can recall offhand, sir.

Q All right. So that right around this area of early 1972, Facchiano was arrested with George Rossi; is that correct? Was that a narcotics conspiracy?

THE COURT: No. He was indicted.

Q (Continuing) Indicted, right around this time, early 1972.

A Well, I don't recall the date of the indictment, but it was after February 3, 1972.

Q Okay. Now, you mentioned something about a Stanley Garland yesterday. I think that was the third name you mentioned; am I correct? In response to certain

1 questions posed by Mr. Phillips, you mentioned a Frank
2 Facchiano, a Panico, and then you mentioned a Stanley
3 Garland; is that correct?
4

5 A I mentioned a Stanton --

6 Q Stanton Gardland; is that correct?

7 A Yes, sir.

8 Q That was the third person you mentioned. You
9 said you had a -conversation with him; is that right?

10 A Yes, sir; I had.

11 Q Tell me: have you ever inspected the --
12 MR. LOPEZ: Withdrawn.

13 Q Was Stanton Garland a registered informant for
14 your bureau?

15 A Yes, sir; he was.

16 Q Did you ever have occasion to look at his
17 performance file?

18 A I would have to say I reviewed his informant
19 file, sir.

20 Q Right. And how long ago did you review his
21 informant's file?

22 A Well, you would have to go back. The last time
23 I probably reviewed it, to the best of my recollection, was
24 prior to May 15, 1972.

25 Q Now, did you find a communication in that communication

1
2 confidential file from any other bureau, your bureau or any
3 other bureau, from Washington or any other place, that
4 Garland was to be closely watched, that he was an unreli-
5 able informant?

6 A No, sir. I cannot recall seeing that.

7 Q You don't recall seeing that?

8 A No, sir; I do not.

9 Q Have you ever been told by anyone in authority--
10 by that I mean your superiors in Washington or Assistant
11 United States Attorneys or anyone working with you -- that
12 Stanton Garland was an unreliable informant?

13 A If I had been told that, Mr. Lopez, I would
14 not have used the man.

15 THE COURT: The question is, did anyone tell
16 you?

17 THE WITNESS: Not that I can recall, sir.

18 Q All right. And this man, in effect, was furn-
19 ishing you with information; isn't that correct?

20 A That's correct, sir.

21 Q And you did not provide him with funds?

22 A Not that I can recall, Mr. Lopez.

23 Q He asked you at one time for \$25,000 to work
24 on narcotics or furnish you with information; isn't that
25 correct?

2 A No, sir; that is not.

3 Q Was there ever any mention of any moneys as
4 far as Garland was concerned?

5 A I don't quite understand how you --

6 Q Yesterday you mentioned something about a sum
7 of money in discussing Garland. Perhaps I didn't hear
8 you correctly. What was that discussion? In other words,
9 didn't Garland propose to you that he be given \$25,000?

10 Help me on that. I --

11 A No, sir; he did not.

12 Q All right. Tell me what that was.

13 A Mr. Garland was giving us information about
14 one Rocco Evangelista, and he stated that he could intro-
15 duce an undercover agent to Mr. Evangelista, but the agent
16 would have to purchase a minimum of a kilogram of heroin,
17 that would cost at that time \$25,000.

18 Q Right. Now, Mr. Garland testified in several
19 cases, didn't he?

20 A I am aware that he testified in one case, I
21 believe, that I am aware of, sir.

22 Q Right. Was that at a motion to suppress in
23 this court?

24 A Not the case I'm thinking of, sir.

25 Q What case are you thinking of? Help me on it.

What case are you thinking of?

A The one I am familiar with involved an individual by the name of, if I recall correctly, George Nathan.

Q All right. Are you aware also that Garland had cases pending in this court?

A Well, I was --

THE COURT: You mean, charges against him?

Q Charges against him, cases pending.

A He had one charge against him that I was aware of.

Q Had he been convicted of that charge?

A No, sir; he had not.

Q Do you know if any proceedings or any testimony had been given as far as that is concerned?

A Not up to February 3, 1972.

Q Or even after that, after February 3, 1972.

A There were proceedings; yes, sir.

Q Do you know if Garland testified before Judge Sylvester Ryan, if you remember or recall?

A I don't know.

Q Was there ever a question raised as far as Garland was concerned, that he was switching narcotics from one case to another case, narcotics coming in from

1 mpd6a

Pallatroni-cross

2 Chicago? Was there ever a question about that, in a
3 narcotics transaction or a narcotics deal, an allegation
4 was being made that Garland was actually switching some
5 narcotics that he had received or sold from one case to
6 another case?

7 A I don't recall ever being told or seen any-
8 thing like that, sir.

9 (Continued on next page.)

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Q Have you ever been told that Garland while he was a registered informant was found with a machine gun by members of your staff? Have you been told that?

A With a machine gun?

Q Yes, with a machine gun.

A No, sir, I have not.

Q Have you been told that he was ever in possession of a gun or guns while being a registered informant and that a recommendation was given that he not be arrested or charged with that? Are you aware of that?

A On one occasion I am aware that he was in possession of a firearm, yes, sir.

Q The case was not referred over to the state authorities, was it?

A To my knowledge, no, sir.

Q And your bureau took no action in connection with it?

A Not as of that date, sir.

Q And when Garland was called upon to give certain information, to back it up in court, he never appeared, is that correct?

THE COURT: I am sorry. I am at a loss.

MR. LOPEZ: All right. Withdrawn. I will try to clarify that.

Q Did Garland after giving you information ever abscond?

A At a later date, he absconded, yes, sir.

Q You mentioned a case in the Eastern District of New York. Was he a key government witness on that case, if you know?

A I don't know, Mr. Lopez.

Q Do you know if Assistant United States Attorney Drucker was in charge of the case in the Eastern District of New York, referring to the case that you mentioned a sealed indictment?

A The case that I referred to --

Q As a sealed indictment in the Eastern District of New York involving Vincent Papa and a number of people?

A Yes, I believe Mr. Drucker was the assistant handling the case.

Q On that case was Garland to be a key government witness, if you know?

A At that point, sir, he was not.

Q Do you know the whereabouts of Garland now?

A No, sir, I do not.

Q Let's take the situation about the automobiles that you mentioned that Vincent Papa drove on February 3, 1972. Is that correct? You mentioned two

1 automobiles in your direct testimony regarding
2 February 3, 1972 as far as Papa was concerned, a Pontiac
3 and a Mercedes. Didn't you mention that yesterday, that
4 he owned a Mercedes? Did Papa own a Mercedes?
5

6 A To my knowledge, he owned a Mercedes.

7 Q On February 3, 1972?

8 A That's what my information was, sir.

9 Q Where did you get this information from?

10 A It was furnished to me by one of the officers
11 in the group.

12 Q Do you know the name of the officer who fur-
13 nished it to you?

14 A I can't recall offhand. It would be an edu-
15 cated guess.

16 THE COURT: Don't guess.

17 Q All right, don't guess.

18 THE COURT: You want a guess? If Mr. Lopez
19 wants you to guess, go ahead.

20 Q Yes, I want you to guess.

21 A I would have to say it was Investigator
22 Zappolo.

23 Q Officer, if I told you that the only Mercedes
24 that Papa ever owned was purchased on September 9, 1972
25 at the Mercedes agency on Northern Boulevard in Queens on

1
2 September 9, 1972, would that refresh your recollection
3 as to when you thought Papa owned a Mercedes?

4 MR. PHILLIPS: Objection, your Honor. I
5 don't think his recollection needs refreshing.

6 THE COURT: I will permit it.

7 A No, sir, it would not.

8 Q You mentioned that on February 3, 1972 Papa
9 was driving a Pontiac, is that correct?

10 A Yes, sir.

11 Q And you checked out the registration of that
12 Pontiac?

13 A Yes, sir.

14 Q And you gave us the name of the company,
15 isn't that right?

16 A Yes, sir.

17 Q What is the name of that company?

18 A To the best of my recollection, it was the
19 Wide World Leasing Corporation, Far Rockaway, Queens.

20 Q Did you ever go and speak with them?

21 A No, I never went there, sir, no.

22 Q So you don't know the arrangements under
23 which Papa was driving the 1968 Pontiac, do you?

24 A No, sir, I do not.

25 Q You don't know if his own car, his own car at

1 the time, the Pontiac, was being repaired there or any
2 other car was being repaired there and in exchange he got
3 another car to drive around?
4

5 A No, sir.

6 Q You don't know that?

7 A I do not.

8 Q You feel that it was unimportant to check with
9 that agency the terms under which he was driving that car?
10 You feel that's unimportant?

11 A Pardon me, sir.

12 Q Do you feel that was unimportant, to verify
13 with the leasing company, as you called it, whether in
14 fact special arrangements had been made by Mr. Papa to
15 lease that car and under what conditions and if he had his
16 own car there?

17 A It would have been impossible to check, sir,
18 on the night in question.

19 Q Not on the night in question, but later, but
20 later on.

21 A No, sir, I didn't think it was important.

22 Q You didn't think it was important?

23 A No, sir.

24 Q But you did give us the conclusion here yester-
25 day that this was a typical NO to use a rented car in

1 narcotics transactions, isn't that correct?

2 A That's correct, sir.

3 Q If you had learned from this agency, this
4 leasing company, that in effect his car was being repaired
5 and they had loaned him another car would your opinion
6 that you gave us yesterday change?
7

8 A No, sir, it would not.

9 Q In other words, if this was the only car
10 that Papa had your opinion would still be the same, is that
11 correct, as far as Papa was concerned?

12 A I didn't quite follow your question.

13 Q Didn't you tell us yesterday that the MO in
14 these narcotic transportations is that a person would use
15 another car not in his registered name?

16 A I testified that on many occasions that does
17 happen.

18 Q And you felt on what you had observed it
19 happened on this occasion, is that correct?

20 A That's correct, sir.

21 Q And the reason you felt that was because Papa
22 owned a Mercedes at the time and he could use his own car
23 right?

24 A That was -- that's partially true, sir.

25 Q So that if that part of your consideration was

absent or was erroneous your opinion yesterday might also change, is that correct?

MR. PHILLIPS: Objection. It's argumentative, your Honor.

MR. LOPEZ: I am trying to find out --

THE COURT: I will permit it. Go ahead.

A No, sir, my opinions would not have changed.

Q So to you actually it didn't matter how many cars he owned, this was a leased car, is that correct?

Actually it didn't matter whether he owned a Mercedes or he didn't own a Mercedes really?

A IT had some degree of bearing, but the leased car at the time had a great deal of influence on my decision.

Q Now let's take February 3, 1972. In the early evening hours, around 6:00, 6:30, I think you told us, if my memory is correct, you told Spurdis and Reilly to work together on a specific assignment, isn't that correct?

A We had that discussion at approximately 6:30, sir.

Q And they went on the specific assignment, is that correct?

A That is correct, sir.

Q Who was in charge as far as this specific

1
2 assignment was concerned? Was Spurdis in charge or was
3 Reilly in charge or neither of them in charge?

4 A Well, as far as I was concerned, Detective
5 Spurdis was the senior man in the team.

6 Q So that outside of yourself giving a specific
7 decision, Spurdis as the senior person was making the
8 decisions as far as this team of officers was concerned,
9 is that correct?

10 A I would agree with that, sir.

11 Q Some time that evening you received a call
12 from either Spurdis or Reilly, is that right?

13 THE COURT: On the radio.

14 Q On the radio.

15 A That is correct, sir.

16 Q Who did you receive the call from?

17 A Patrolman George Reilly.

18 Q Since last night have you discussed this case
19 with George Reilly, the facts in this case, the testimony
20 in this case?

21 A I would say not really, sir.

22 Q During the time that there was an intermission
23 on the stand in which George Reilly was temporarily
24 excused from testifying here and he went into the witness
25 room, I suppose, did you have occasion to discuss his

testimony here?

A The only thing that I asked him, I said, "Are you on cross yet?" and he said "Yes." Then we discussed a topic not related to the case.

Q You received a radio call, isn't that correct?

A That is correct, sir.

Q Who did you receive the radio call from?

A Patrolman Reilly.

Q What exactly did Patrolman Reilly tell you?

A As I testified yesterday, this is to the best of my recollection.

Q Right.

A "We are at 1908 Bronxdale Avenue. A car just pulled up. We observed a male carrying a suitcase, another male get out of the car, entered the house. It's the old man VIP."

Q Anything else?

A As far as I can recall, that was it.

Q Was your appearance at the scene near Bronxdale Avenue requested at the time?

A I believe, sir, that I inferred, "I will be on my way."

Q Did you go with anyone?

A Yes, sir, I did.

1
2 Q Who did you go with?

3 A Special Agent James Reed.

4 Q Is Special Agent James Reed still with your
5 bureau?

6 A Yes, sir, he is.

7 Q He is working with you, is that correct?

8 A He is working with the Drug Enforcement
9 Administration.

10 Q And you and James Reed were the only two
11 persons in the car, is that correct?

12 A That is correct, sir.

13 Q Then you went down there and had a conversatio
14 with Spurdie, is that correct?

15 A Yes, sir, that is.

16 Q What did Spurdie tell you and what did you
17 tell Spurdie when you met in the vicinity of Bronxdale
18 Avenue?

19 A Once again, to the best of my recollection, I
20 met Detective Spurdie on the street corner across the
21 street from 1908 Bronxdale Avenue and he told me the follow
22 ing, that they had been watching 1908 Bronxdale Avenue,
23 that seconds before they called me a car pulled up there,
24 a male got out of the car and carried a suitcase into
25 1908 Bronxdale Avenue, the vehicle executed a U-turn and

1 parked on the other side of the street right opposite
2 1908 Bronxdale Avenue, the second man got out of the car,
3 as he was walking across the street he looked directly
4 into the windshield of the car being occupied by Detective
5 Spurdis and Patrolman Reilly. At this point Detective
6 Spurdis told me the second individual was Vincent Papa,
7 and he went into the building 1908 Bronxdale Avenue.
8

9 Q Going into weather conditions, it was rather
10 dark out, isn't that correct?

11 A There are street lights there.

12 Q Street lights, but it was night time?

13 A Yes, it was.

14 Q And it was pouring rain? I just want to
15 establish that through your testimony. Was it pouring rain?
16

17 A At the point that I arrived at 1908 Bronxdale
18 it wasn't pouring. There might have been a light drizzle.
19 If it was pouring rain I would have spoke to Detective
20 Spurdis in the car.

21 During the course of the evening it was raining
22 rather hard, it would let up, a slight drizzle.

23 (Continued on next page.)
24
25

2 Q After your conversation with Spurdis you posted
3 yourself some place, is that correct?

4 A Yes, sir.

5 Q Where was that exactly?

6 A I don't reca-l the street name, but I believe it
7 is right across the street where I could-- at that time I
8 could see the front door of 1908 Bronxdale Avenue.

9 Q Was that near Van Nest, if you know?

10 A No, sir, it wasn't near Van Nest.

11 Q Was there a Carvel nearby?

12 A There is a Carvel on Morris Park and Bronxdale.

13 Q So that you say that you had a clear view of the
14 doorway at 1908 Bronxdale?

15 A Yes, sir.

16 Q What time did your surveillance begin of 1908
17 Bronxdale?

18 A I got there shortly after 8:45.

19 Q Did you see anyone come in or out of 1908 Bronxdal

20 A Shortly after I arrived I believe three women
21 departed the building.

22 Q About what time was that?

23 A The best I can recall, it wasn't too much after
24 I arrived.

25 Q What was the next thing that happened in relation-

1 ship to 1908 Bronxdale, as far as you could see?

2 A Shortly after the weomen left one unidentified
3 male came out of 1908 Bronxdale.

4 Q You saw him come out?

5 A Yes, I did.

6 Q Was he carrying anything?

7 A I did not observe him carrying anything, no, sir.

8 Q Did you see him carrying an attache case?

9 A I did not observe an attache case, sir.

10 Q And then you followed him, is that correct?

11 A Yes, I did.

12 Q Did you take a look at him?

13 A I couldn't tell who the man was. I couldn't iden-
14 tify him, if that's your question.

15 Q Right. You couldn't on this date identify him?

16 A No, sir.

17 Q So that if I asked you if this was an attorney,
18 Murray Richman, you wouldn't know that?

19 A No, sir, I wouldn't.

20 Q Of your own knowledge at this time?

21 A No, sir.

22 Q But you did have occasion to subsequently check
23 the vehicle, is that correct?

24 A Yes, sir, I did.

1
2 Q And your subsequent check of the vehicle provided
3 you with the information that this car was registered to
4 a Murray Richman, is that right?

5 A That's correct, sir.

6 Q Yesterday you gave us the benefit of an opinion
7 in which you felt that this was a modus operandi or an MO
8 of people involved in narcotic transactions, just before
9 they are going to do something or go somewhere to get a
10 surveillance off them?

11 Isn't that what you told us more or less yester-
12 day?

13 A What are you referring to?

14 Q Yesterday's testimony.

15 Didn't you tell us yesterday that a standard MO
16 would be to take the heat off anything that was to be done
17 or any transaction that was to be completed by sending a
18 lead-off car?

19 A That's very true, sir.

20 Q Did you mention this yesterday?

21 A Yes, sir, I did.

22 Q I believe yesterday as one of the elements that
23 you gave of your testimony you inferred that your impression
24 at the time, which worked in your decision, was the fact
25 that this had in fact occurred and that you had been led

1 in a chase of an automobile, is that correct?

2 A I didn't say- - I didn't mean to imply that I chased
3 an automobile.

4 Q Followed.

5 A I followed an automobile in a circular pattern.
6 That's what I believe I testified to.

7 Q This is one of the elements that led you to de-
8 cide ultimately on February 3, 1972 that the Papa-Di Napoli
9 car was to be stopped, isn't that correct? Wasn't this a
10 consideration?

11 A During the course of the evening that did figure
12 into my decision, very --

13 Q Right.

14 A -- little.

15 Q Tell me, did you subsequently learn that Murray
16 Richman, the attorney, was actually driving this car?

17 A No, sir, I never did.

18 Q You never did?

19 A No, sir.

20 Q If I told you that Murray Richman, an attorney,
21 was actually driving this car would it affect your judgment
22 as far as the reason for the maneuvers that this car made,
23 would it affect your reasoning in any way?

24 A Not necessarily, sir.

Q You still might believe that people involved in a narcotic transaction to take heat off surveillance might employ an attorney in the middle of the night to head off or take off heat from them?

You think that is standard MO, is that correct?

A It is possible.

Q It is possible, but I mean, you are an experienced officer, 15 years, you think that that is the way they would operate, they would go for an attorney and have him head you off and have you follow him?

A I said it's possible.

Q It's possible, but this was an element in your consideration of why you should stop the car.

A It was one of the small elements in my consideration, yes, sir.

Q While you were following this car something else happened at 1908 Bronxdale Avenue, isn't that correct, someone left the house, Papa and the unidentified male, isn't that correct?

A That's not correct, sir.

Q Did you go back to 1908 Bronxdale?

A Yes, sir, I did.

Q Did you again commence a surveillance of 1908 Bronxdale?

1 A Yes, sir, I did.

2 Q Where were you exactly at that time?

3 A At that time I took up the same position that I
4 originally had.

5 Q Was this near Carvel's?

6 A No, sir, it was not.

7 Q Where was it exactly?

8 A As I testified to before, it was on the street
9 directly across from the door, looking straight ahead at
10 the door of 1908 Bronxdale.

11 Q What was the next thing that you observed?

12 A The women returned. I believe they were the
13 same three women. But three women returned to the building.

14 Q And what is the next thing that happened?

15 A Shortly after that two males exited 1908 Bronx-
16 dale Avenue.

17 Q Did you recognize one as Vincent Papa?

18 A No, sir, I did not.

19 Q Was one of the males at that time carrying Gov-
20 ernment's Exhibit 1, the green suitcase?

21 A No, sir, they were not.

22 Q Did you follow these two males?

23 A I attempted to obtain their license-- they each
24 got in a separate car. I attempted to get their license
25

plate, but they were too far gone by the time I moved from my parking area.

Q Did you then go back again to the same parking area?

A No, sir, I did not.

Q What did you do?

A I parked in the vicinity of Carvel.

Q From the vicinity of Carvel you no longer had a view of 1908 Bronxdale, did you?

A No, sir, I did not.

Q So you couldn't see what was happening there, is that right?

A That's correct, sir.

Q The next thing that happened was that you received a radio call?

A That is correct, sir.

Q Who called you?

A Once again it was Patrolman Reilly.

Q What did Reilly tell you at that time?

A To the best of my recollection, either "both out of the house, Vinnie Papa is carrying the suitcase with two hands, it is loaded," or "It's loaded, he is carrying it with two hands," one or the other.

Q There is no question in your mind that he said,

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1 "two hands" on the radio?

3 A No question at all.

4 Q Did you speak with Spurdie on the radio at this
5 time?

6 A No, sir, I did not.

7 Q And did you order that the car be followed?

8 A I followed the car.

9 Q Did you follow first?

10 A At this point, to the best of my recollection, I
11 came down a side street and as the car crossed Morris
12 Park Avenue heading south on Bronxdale I fell in behind it.
13 I was the lead car at that point.

14 Q How many feet behind the Papa car were you?

15 A I don't recall, Mr. Lopez.

16 Q Did you know where Spurdie was at that time, while
17 you were in the lead car?

18 A He executed a U turn and he was coming up di-
19 rectly behind me.

20 Q Did there come a time that you changed your
21 position in relationship to the Papa car?

22 In other words, did Spurdie's car become the lead
23 car?

24 A Yes, sir, it did.

25 Q And at what point did this happen?

1
2 A Well, it had to be at a point between Bronxdale
3 and Morris Park and Bronxdale and East Tremont.

4 Q Was there any specific reason for this?

5 A It is just you change positions, that's all.

6 Q There was no specific reason, you just changed
7 your positions, is that right?

8 A That's basically true.

9 Q Were you in communication with Spurdis at this
10 time?

11 A I was talking to the vehicle that was being
12 utilized by Detective Spurdis, yes, sir.

13 Q Were you directly in communication with Spurdis,
14 talking to him?

15 A Well, it's pretty difficult to drive and talk on
16 the radio. My transmissions were to both Detective Spurdis
17 and Patrolman Reilly.

18 Q At one point you gave the command or the order
19 to head off the car and bring it to a stop?

20 A That's correct, sir.

21 Q Were you curious to learn where the car was
22 headed?

23 A At that point?

24 Q Yes.

25 A No, sir, I was not.

1
2 Q You didn't care where this valise was being
3 taken, is that correct?

4 A At that point, no, sir.

5 Q In other words, you made a decision at this
6 point, halt the vehicle?

7 A I had made a decision to stop the vehicle and ar-
8 rest the occupants, yes, sir.

9 Q That's what I want to get at.

10 The basis for halting the vehicle-- I want to
11 make sure about this-- was your knowledge of Vincent Papa,
12 your knowledge of the background of Vincent Papa?

13 A That's correct, sir.

14 Q That was one element, is that correct?

15 A Yes, sir.

16 Q The second element that influenced your decision
17 was the fact that a suitcase had been brought into the house
18 and that it appeared heavier, according to your information,
19 when it left?

20 A That also influenced my decision, yes, sir.

21 Q Three, the fact that you had previously followed
22 a vehicle that made a curious turn and then departed from
23 the area, was that part of the elements? What I am
24 driving at here, to break it down --

25 A I understand what you are driving at.

Q -- what actually made up your mind to stop the vehicle, to arrest them?

A Everything you have mentioned thus far are one or more of the factors that--

Q I want to mention all of the factors.

A -- that influenced my decision.

Q In other words, Papa's background, the matter of the valise going into the house and coming out apparently heavier?

A That influenced my decision.

Q The fact that you had followed a car that had made some curious turns?

A That was another factor, yes, sir.

Q Another factor was the conversations that you had had with Spurdis in relationship to a John Doe No. 3? Did that enter into it? If it didn't, just tell me "It did not enter into my mind at the time."

A I am thinking about my answer, sir. I don't want to rush myself. I want to give you an honest answer.

Q Sure. Take all the time that you want to.

A I really -- at that point I really couldn't say that I was thinking too much about John Doe No. 3.

Q So I am correct that the basis, the factors of your decision to halt the car were the three elements

1
2 that we have mentioned or the three factors that we have
3 mentioned?

4 A There were more than three.

5 Q What other factors were there? That's what I
6 am trying to get at. We have named three.

7 A Well, there was, of course, Mr. Papa's background.

8 Q We mentioned that. That was Factor No. 1.

9 A The move of the car.

10 Q We mentioned that.

11 A The suitcase going in and out, a rainy night.

12 Q That was the third factor. Actually these were
13 the three factors that influenced--

14 A There was more than that in my mind, sir.
15
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Q Well, that's what I am trying to get, the state of your mind, what other factors were there?

A The fact taht Vincent Papa was known to be associated with people in --

Q Narcotics?

A No. That's part of it of my knowledge of Mr. Papa. He frequented in areas in Queens, and I felt it was unusual that he was in the Bronx, and the fact that Mr. Papa was using a leased car, the fact that 1908 Bronxdale Avenue had come up once before in this-- well, at least twice before in this investigation.

Those were some of the factors that influenced my decision.

Q Are there any other factors that you can mention to Judge Duffy at this time that influenced your decision, besides those that you have already mentioned, those five?

A I think I covered most of them, sir.

Q Right.

Tell me, you spoke about Papa's background. Did you know that he was involved in gambling activities?

A I don't recall knowing that he was -- that he had any arrests or --

Q Well --

A I don't recall.

1 Q You don't recall?

2 A -- particularly that he was involved in gambling.

3 I know he had an arrest record for other than narcotics
4 crimes, but I also knew that he was heavily involved in
5 narcotics traffic.
6

7 Q Well, did you have any information that he was
8 involved in shylocking or in gambling or in policy, in
9 addition to the information that you had about narcotics?

10 A At that particular time?

11 Q On February 3rd, 1972.

12 A No, sir, I did not.

13 Q Of course, as far as Joseph Di Napoli is con-
14 cerned, have you learned at any time whether he has been
15 involved in shylocking, policy or gambling?

16 A Yes, sir, I was aware of that.

17 Q Were you aware of that on February 3rd, 1972?

18 A Yes, sir, I was.

19 Q Were you aware of the fact that Joseph Di Napoli
20 was involved in substantial shylocking activities?

21 A I was aware that he was suspected of being in-
22 volved in a rather lucrative loan-sharking or shylocking
23 operation.

24 Q You mentioned that Garland, Stanton Garland,
25 indicated that he had met Vincent Papa in Las Vegas, is that

2 correct?

3 A That's correct, sir.

4 Q Did he also mention to you, if you recall, whether
5 Vincent Papa had any interest in Las Vegas, any gambling
6 casinos there, if you recall?

7 A I don't believe he mentioned anything like that,
8 sir. I think I would have remembered something like that.

9 Q Did Garland ever mention the name of Di Napoli?

10 A He did not.

11 Q And also on February 3rd, 1972 you had no narcotic
12 information as far as Di Napoli was concerned. You didn't
13 even know --

14 MR. LOGAN: I withdraw that question.

15 Q You didn't even know who the other unidentified
16 person was in the automobile with Papa?

17 A I didn't know who Mr. Di Napoli was at that time.

18 Q So that consideration didn't even enter your mind,
19 is that correct?

20 A Well, that's not altogether true.

21 Q Is that another factor in your consideration?

22 A I did have certain information that Joseph
23 Di Napoli was involved in loan-sharking operations, which
24 was centered around the Cottage Inn.

25 Q All right. Okay.

2 A Now, part of that operation was attended to by
3 one Joseph Di Benedetto.

4 Q Let me ask you this.

5 MR. PHILLIPS: I don't think the witness has
6 finished his answer.

7 MR. LOPEZ: Oh, I'm sorry.

8 THE COURT: Go ahead.

9 A I also had information that Mr. Di Napoli was
10 referred to by his friends as Big Joe, or his associates,
11 and Mr. Di Benedetto as Little Joe.

12 I did have information or a statement from an
13 informant that a Big Joe was involved in narcotics in
14 that area, but I didn't know if Big Joe and Joseph Di Napoli
15 were one and the same.

16 Q All right.

17 Now, as a result of that search -- let's put it
18 in a different form:

19 Approximately, just for the sake of making it
20 easier -- approximately one million dollars was uncovered,
21 is that correct?

22 A Well, the exact figure--

23 Q We know what the exact figure was, but to make it
24 easier, approximately one million dollars was uncovered,
25 approximately?

2 A I know your claim states \$967,000 or whatever it
3 is, but approximately one million dollars was found; is
4 that right?

5 THE COURT: Is that a ball park figure?

6 THE WITNESS: Approximaely, your Honor.

7 THE COURT: All right.

8 Q All right.

9 Was any narcotics found here?

10 A No, sir, no narcotics were found.

11 Q Did you make a search of 1908 Bronxdale?

12 A Early in the morning of February 4, yes, sir.

13 Q And no narcotics were found?

14 A No, sir, they were not.

15 Q Now, you knew that Di Napoli was involved in shy-
16 locking in a lucrative business, is that correct?

17 A I had knowledge of that, yes.

18 Q Have you ever been involved in any investigations
19 involving shylocking itself?

20 A No, sir, I have not.

21 Q So that you really couldn't give us information
22 whether the million dollars that was found in the car, the
23 approximate million dollars in the car was either a shy-
24 locking operation, a gambling operation or a narcotic
25 operation; I mean of your own knowledge, you couldn't give

1
2 that judgment?

3 A From my experience, my judgment was that it was
4 a narcotics transaction.

5 Q But your experience is only narcotics, isn't that
6 correct?

7 A That is, yes.

8 Q Isn't that correct?

9 A Basically narcotics, yes.

10 Q So that is what you were looking for, is that cor-
11 rect? So that's what you were looking for, narcotics,
12 is that correct?

13 A That's correct, sir.

14 Q And you were considering anything else, were you?

15 A At that point, no, sir.

16 Q Do you have of your own personal knowledge any
17 specific information with regard to the use of the million
18 dollars?

19 A I don't quite follow you.

20 Q Yes.

21 Do you have of your own knowledge any specific
22 information as to what the million dollars was to be used
23 for, any specific information?

24 A Yes, sir, I did obtain specific information.

25 Q Later on?

2 A That's correct, sir.

3 Q From whom?

4 A From an informant.

5 Q What's the name of the informant?

6 MR. PHILLIPS: Objection, your Honor.

7 THE COURT: Do we have to get into this at all?

8 Q All right.

9 Officer, let's go back to February 3rd, 1972.

10 You ordered the car to be stopped, is that correct?

11 A Yes, sir.

12 Q That was your decision?

13 A At the time, yes, sir, I made that decision.

14 Q Right.

15 Now, did you receive any opposition, as far as
16 that decision was concerned?

17 A No, sir.

18 Q Was that decision suggested to you by anyone
19 else?

20 A I don't recall, but we could have discussed it,
21 but at that point I made that decision.

22 Q And then the car was halted, is that correct,
23 the way you described it yesterday, is that right?

24 A Yes, sir.

25 Q Now, you arrived at the scene, is that right?

1
2 A I was on the scene all that time, sir. I was
3 right there.

4 Q Who put Vincent Papa under arrest?

5 A To the best of my knowledge, John Spurdis.

6 Q He had his gun drawn?

7 A I didn't notice if he had his gun drawn.

8 Q Excuse me.

9 Did you have your gun drawn?

10 A I believe I had my gun drawn, sir.

11 Q Now, exactly, when you arrived and got out of
12 the car, what exactly did you do?

13 A As the car was stopped I pulled in right behind
14 it. I got out of the driver's side of the car, since I
15 was driving, and observed Vincent Papa get out of the
16 driver's side of the Pontiac and walk towards the vehicle
17 that Detective Spurdis and Patrolman Reilly were using.

18 At that point I yelled to John, "Take him, John,"
19 and I went around to the passenger side of the Pontiac
20 and placed Mr. Di Napoli under arrest.
21
22
23
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Q Did you put a gun on him when you placed him under arrest?

A I believe I had my gun in hand, yes.

Q So that while Spurdie was securing Papa, you secured Di Napoli; is that correct?

A In a sense. I put Mr. Di Napoli over against a retaining wall of St. Raymond Parish, the church, and searched for weapons. He didn't have any. And I instructed Agent Reed, who was with me, to handcuff Mr. Di Napoli.

Q And after both were secured, is that when you recall that Spurdie went into the back of the car and pulled out Government's Exhibit 1, the green valise? Do you recall that?

A No, sir; it wasn't.

Q Well, when was that, if you recall?

A Well, I can tell you what I saw.

Q Tell us what you saw.

A While Agent Reed was securing Mr. Di Napoli, I turned around, and Detective Spurdie had the green suitcase out on the pavement, and it was open. I started walking towards him. I said, "What do we have, John?" He said, "Money."

A little more conversation. I looked to see

1 if there was anything else but money. I secured the suit-
2 case and took custody of it.

3
4 Q Where did you put the suitcase?

5 A In the trunk of the vehicle that I was using.

6 Q In the trunk of the vehicle that you were
7 using?

8 A Yes.

9 Q Now, what happened to Vincent Papa?

10 A Officer Reilly and I transported Vincent Papa
11 to the office of New York Joint Task Force.

12 Q That is at Varick Street?

13 A That's correct, sir.

14 Q What happened to Spurdis?

15 A Detective Spurdis transported Joseph Di Napoli
16 to the office of the New York Joint Task Force.

17 Q And where was George Reilly at this time?

18 A George Reilly was with me, sir.

19 Q So in your car you had Reilly, Reed --

20 A No, sir. I did not mention Agent Reed.

21 Q Where did Agent Reed go?

22 A Agent Reed secured the car that Papa was
23 utilizing and transported it to the office of the New York
24 Joint Task Force.

25 Q And it was your decision, then, -- it was your

1 mpd3

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2 decision that Spurdis go with Di Napoli to Varick Street
3 is that correct?

4 A That's correct, sir.

5 Q And it was also your decision that Papa and
6 Reilly go with you in your car; is that correct?

7 A That is correct, sir.

8 Q And Reed commandeered the Papa Pontiac; is
9 that correct?

10 A Agent Reed secured and transported Mr. Papa
11 vehicle, the vehicle that Mr. Papa was using.

12 Q Now, on the way down to Varick Street, did
13 you stop the car?

14 A Yes, I did, sir.

15 Q Was Papa asked to leave the car?

16 A He was, sir.

17 Q And who accompanied Papa when he went out
18 of the car?

19 A Patrolman Reilly.

20 Q And was there any specific reason for that?

21 A Yes, sir; there was.

22 Q And what was the reason for that?

23 A I wanted to communicate with other units that
24 were on the air and put them in certain positions so
25 other investigative action could be taken, and I didn't

1 want to make Mr. Papa aware of what I was doing.

2 Q And Papa was in custody at the time?

3 A That's correct, sir.

4 Q You didn't want him to learn what the other
5 investigative units were doing and that's why you put him
6 out of the car; is that correct?

7 A Yes, sir.

8 Q Was it raining at the time?

9 A Yes, sir; it was.

10 MR. LOPEZ: Your Honor, may I have a few
11 minutes, now?

12 THE COURT: Sure. Let's take a ten-minute
13 break.

14 (Recess.)

15 MR. LOPEZ: May I continue, your Honor?

16 THE COURT: Yes. Please do.

17 Q Agent, just a few more questions, to help me
18 clarify.

19 As far as the car that Vincent Papa was
20 driving is concerned, did you check it out as far as
21 registration was concerned, before the vehicle was stopped
22 or after?

23 A Prior to the vehicle being stopped.

24 Q Prior. I wanted to make that clear.

1 mpd5

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2 Now, officer, going back to your judgment in
3 stopping the car on February 3, 1972, the judgment that
4 you exercised, was it your feeling that a narcotic trans-
5 action was afoot? Is that what you have told us?

6 A I believed, sir, that something involving nar-
7 cotics was happening, something.

8 Q Something. You weren't sure; is that correct?
9 I mean --

10 A You could never be sure of --

11 Q You could never be sure. That's what I mean.

12 Was it your impression when you received infor-
13 mation about Papa and Di Napoli coming out of 1908 Bronx-
14 Avenue with what appeared to be a heavier suitcase that
15 a narcotics transaction was to be completed or had been com-
16 pleted, if you have any opinion on that at all?

17 A I at that time felt at that particular point
18 it was very possible that a transaction had taken place

19 Q So that either money was in 1908 Bronxdale
20 and narcotics was in the valise, or narcotics was in
21 1908 Bronxdale and money was in the valise? Were these
22 the two things you were thinking about?

23 A I was thinking of both money and narcotics..

24 Q Both money and narcotics?

25 A Yes, sir.

Q And this consideration was exactly what you had in mind when they came out of the house and you received this information; is that correct?

A Well, I was thinking -- From the time I arrived at 1908, I was thinking about as many possibilities as I could think of.

Q But you had arrived at no conclusions as yet?

A Not at that point; no, sir.

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Q You didn't post any agent or call for any additional help to put a surveillance on 1908 Bronxdale Avenue, did you?

A Not at that point.

Q Not at that point, and you didn't ask Agent Reed to remain behind as far as 1908 Bronxdale Avenue?

A No, sir, I did not.

Q Although the thought did occur to you that narcotics might be in the house?

A It could have been possible.

Q As a matter of fact, a search warrant and an affidavit were submitted to actually search 1908 Bronxdale Avenue in the early morning hours of February 4th?

A Yes, sir, we obtained a search warrant.

Q But in the meantime you didn't place the house under any guard or under any surveillance while the arrest and while the proceedings were going on on Varick Street, is that correct?

A That's incorrect, sir.

Q You did have a surveillance on the outside?

A Yes, sir, I did, most certainly did.

Q The thought must have run through your mind that if a narcotic transaction was in fact afoot wouldn't it have been interesting to have learn where Papa and the

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1 male companion were actually going to?

2
3 A In my opinion, Mr. Lopez, at the time, with
4 no reflection on Mr. Papa, I considered Mr. Papa an
5 extremely -- not only me; my department -- an extremely
6 substantial violator. I was not going to take the chance
7 of lsoing Mr. Papa in a surveillance.

8 Q So that although you weren't sure whether in
9 effect a transaction had or had not taken place, you
10 actually wanted to make your move at that time, take your
11 shot right there?

12 A In my judgment, at that point the opportunity
13 was there, and I exercised my judgment.

14 Q When your judgment was exercised you ordered
15 Spurdis to arrest Papa and Di Napoli was also arrested,
16 isn't that correct?

17 A That's correct, sir.

18 Q And what did you charge them with?

19 A Conspiracy -- I believe the complaint said
20 conspiracy to violate the Federal Narcotic Laws.

21 Q And who filed this complaint? Who filed the
22 complaint, who was the officer that signed the complaint?

23 A I believe Detective Spurdis.

24 Q Did you see the complaint?

25 A I have seen that complaint, I believe, sir.

Q And who filed the affidavit and the application for a search warrant?

A Detective Spurdis.

Q And was this per your instructions?

A I --

Q Was this application made pursuant to your order?

A When you say to my order, we discussed --

Q Did you tell Spurdis to get a search warrant?

A I discussed first the events with a United States Attorney and he believed there was probable cause for a search warrant to be issued and since Detective Spurdis had made many of the observations personally he swore to the accuracy of the affidavit.

Q And it was on the basis of his affidavit that the search warrant was issued, isn't that correct? That's your recollection, isn't that right?

A As far as I am concerned, yes, sir.

Q Did you file any activity sheets at all in this matter, any activity sheets, daily activity sheets, regarding February 3, 1972?

A Yes, sir, I have.

Q And did Spurdis file?

A I assume he did, yes, sir.

Q Did you countersign any reports that Spurdis filed as senior officer?

A At the time I might have initialled reports that he prepared, but I did not have final approval on them, sir.

Q No, but at least you saw them, is that correct?

A That's correct.

Q Any reports that he filed you would see?

A That is correct.

Q And you would have to initial them, isn't that right? Isn't that the procedure on these reports?

A I review the reports, yes.

Q You review the reports?

A That's correct.

Q And if there was any question you could question Spurdis on it, isn't that right?

A That's correct.

Q This often happens in your procedures, isn't that right?

A As far as what, sir?

Q As far as filing the reports, this is your procedure, you are the group supervisor.

A As far as getting them in timely, it's my job to see that the reports are handed in in a timely

1 fashion.

2
3 Q And to review them also, isn't that right?

4 A That's correct, sir.

5 MR. LOPEZ: Your Honor, at this time my
6 application is that the government produce those reports.
7 We need them for our examination here.

8 I think they fall into the form of 3500
9 material. I think this is an important part of the trial
10 proceeding, that we would be entitled to them at this
11 time both as to Reilly, if there are any reports, and
12 certainly as to this officer, if there are any reports.

13 THE COURT: Reilly testified yesterday that
14 he didn't make any reports.

15 MR. LOPEZ: So that eliminates Reilly. But
16 there are reports here as far as this agent is concerned
17 that we would like to see, including any reports that he
18 might have given Mr. Phillips, if such be the case.

19 MR. PHILLIPS: Your Honor, I think this is
20 somewhat an eleventh hour request. Mr. Lopez indicated
21 that he only had a few more questions to ask. The direct
22 examination of Agent Pallatroni was completed yesterday.
23 There was no request made at that time. There was no
24 request made this morning. Now for the first time a
25 request has been made.

1
2 Addressing myself to the merits of it, we
3 submit that 3500 material applies to the trial of a case,
4 not to a pre-trial suppression hearing. I believe Judge
5 Weinfeld has so ruled in another case.

6 MR. LOPEZ: If your Honor holds that we are
7 entitled to the 3500 material as far as the suppression
8 hearing is concerned, I think that the ground rules were
9 that we were to obtain the 3500 material without specific
10 request.

11 If your Honor says that we are not entitled --

12 THE COURT: That had to do with the trial.

13 (Continued on next page.)
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2 MR. LOPEZ: Another reason that I have to re-
3 quest this material is that I am calling a police officer
4 by the name of Spurdis to the stand to give your Honor
5 facts and circumstances on this matter and I think that
6 I should have this material as far as Spurdis is concerne
7 at least a chance to review it.

8 THE COURT: I don't have Section 3500 in front
9 of me, but it is my recollection that 3500 applies to
10 witnesses called by the government.

11 Do you have it?

12 MR. ELLIS: Yes, your Honor, and I call the
13 Court's attention to the fact that it refers to any
14 criminal prosecution and not merely a trial.

15 THE COURT: Let me see it.

16 I have just reviewed Section 3500. I do not
17 believe that it applies and therefore I will not order th
18 government to turn over Detective Spurdis' report.

19 If you call Detective Spurdis he is not a wit-
20 ness called by the United States, as provided in Section
21 3500.

22 Do you have any other questions to ask?

23 MR. LOPEZ: No, not at this time, your Honor.

24 THE COURT: All right. Step down.

25 MR. PHILLIPS: I have two or three questions on

1
2 redirect.

3 THE COURT: Don't go away.

4 MR. LOPEZ: Your Honor, may I at this time
5 offer into evidence the contents of Government Exhibit 1.
6 I don't care if it is marked as a government exhibit or as
7 a defendant's exhibit. The money itself, whatever the
8 amount might be, whatever the amount given by the witness,
9 I would like it introduced.

10 MR. PHILLIPS: Do you have it?

11 MR. LOPEZ: I am offering it to deem it marked,
12 the photograph or whatever. I would like to have it.

13 Can we have that, the contents? We have the
14 valise marked Government's Exhibit 1.

15 THE COURT: You want the contents deemed marked?

16 MR. LOPEZ: Right, so that your Honor has some-
17 thing to suppress.

18 THE COURT: All right. We will have the con-
19 tents deemed marked as an exhibit.

20 MR. LOPEZ: Fine.

21 Government's Exhibit 2?

22 THE COURT: I assure you the last thing I want
23 is that money floating around this courtroom or any place
24 else in this courthouse. Somebody else has got to be
25 responsible for it.

xx

MR. LOPEZ: We will hold it, Judge.

(Government's Exhibit 2 deemed marked.)

MR. PHILLIPS: I have a few questions on re-direct, if I may, your Honor.

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q Agent Pallatroni, was Papa in fact considered by your agency at that time, the Bureau of Narcotics and Dangerous Drugs, one of the top narcotics traffickers in the country?

A Yes, sir, he was.

Q You mentioned I believe on cross-examination that at some point in time Stanton Garland absconded.

Was that prior to or after February 3, 1972?

A That was much after February 3, 1972.

Q Was it your information that Papa owned one car or two cars as of February 3, 1972?

A Two vehicles at the time, sir.

Q One of which was a Mercedes?

A Yes, sir.

Q And did you know the other type?

A No, sir, I did not. If I did, I don't recall.

Q You mentioned on cross-examination that 1908 Bronxdale Avenue had come up previously in this investigation.

1 Could you just briefly summarize the ways in
2
3 which it came up?

4 A I believe it was early August 1971 we were making
5 a narcotics purchase, an undercover officer, from Frank
6 Facchiano. At this time we had information that Facchiano
7 went to the Cottage Inn to meet his source for the nar-
8 cotics. He had a conversation with a man who was utilizing
9 a vehicle that was registered to Genevieve Patalano at
10 1908 Bronxdale Avenue.

11 Also prior to February 3rd we had arrested Joseph
12 Di Benedetto after he departed 1908 Bronxdale Avenue in a
13 stolen car.

14 At that time he had given his address as 1908
15 Bronxdale Avenue.

16 To the best of my recollection, on one occasion
17 some time during the course of this investigation I believe
18 Detective Spurdis had mentioned that he had observed
19 Joseph Di Napoli's vehicle parked in front of 1908 Bronxdale

20 Q On what do you base your opinion that the money
21 seized on February 3, 1972 was part of a narcotics trans-
22 action as opposed to gambling or shylocking or some other
23 type of illegal activity?

24 A Well, there are several reasons, sir. First of
25 all, the amount, the manner in which it was being moved,

the secrecy around it.

Q Just briefly tell us, what about the amount indicated to you that it was narcotics, related to narcotics?

A Mr. Papa has been considered, as I mentioned before, one of the larger dealers in the United States. Estimates were that he was capable of producing hundred kilogram quantities of heroin at a time.

This type of money could have produced somewhere between 50 kilos of pure heroin and up. This is the kind of money you do find in the sale of large quantities of narcotics.

MR. PHILLIPS: I have nothing further, your Honor.

RECROSS-EXAMINATION

BY MR. LOPEZ:

Q As far as the cars were concerned, the two vehicles that were owned by Vincent Papa, you have the registration of the vehicle that Papa was driving on February 3, 1972, at least its number?

A I don't recall the registration, but it was a dealer plate, a 1966 something or other.

Q It was a dealer plate, isn't that correct?

A Yes, sir.

Q Do you have a registration number on the Mercedes that you say Papa owned on February 3, 1972?

A No, sir, I don't.

Q You don't have that any place in your reports or anything like that?

A I did not prepare any reports, sir, as I told you, regarding Mr. Papa's vehicles, so I am not aware of that.

MR. LOPEZ: I have no further questions of this witness at this time, your Honor.

MR. PHILLIPS: I forgot to ask one thing, your Honor, if I could. I forgot actually yesterday.

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q Did you determine whether Evangelista was under investigation by your agency?

A Yes, sir, I determined that he was being investigated by the Westbury District Office.

Q And that was after Garland told you about him and prior to February 3, 1972?

A Yes, sir.

2
3 Q Was the car, the leased car, the car that was
4 traced back to the leasing company, that was observed out
5 side 1908 Bronxdale Avenue, known by you at that time to
6 be owned by Vincent Papa or felt by you to be owned at
7 that time by Vincent Papa?

8 A No, sir, it wasn't.

9 RECROSS-EXAMINATION

10 BY MR. LOPEZ:

11 Q On that leasing situation, you don't know whether
12 this was a leased car or not; you aren't telling us it
13 was a leased car?

14 A What I said, sir, is that it came back to a
15 leasing corporation.

16 Q What was the name of the corporation?

17 A As far as I remember, World Wide Leasing Corpora
18 tion.

19 Q And it is on that basis that you feel this might
20 have been a leased car?

21 A That's correct.

22 Q But you never really checked it out?

23 A As far as I can recall, no, sir, I did not.

24 Q But you do know that it has dealer's plates?

25 A Yes, it does-- it did. I don't know now.

Q But you told us at the time--

1
2 A Yes.

3 Q Dealer's plates?

4 A Yes.

5 Q And if it were a leased car or a rented car it
6 would have a Z number; isn't that what New York State law
7 requires?

8 A Z's, Y's.

9 Q This didn't have a Z or a Y, it had dealer's
10 plates?

11 A Yes.

12 Q So this car, as far as you know, could have been
13 a replacement care for repairs, is that right?

14 A I didn't think of it at the time.

15 Q And you never checked it our investigated it?

16 A Not that evening or later on, no, sir.

17 MR. LOPEZ: Thank you.

18 I have no further questions.

19 MR. PHILLIPS: Nothing further.

20 THE COURT: All right. You may step down.

21 (Witness excused.)

22 MR. PHILLIPS: That's the extent of the govern-
23 ment's case in opposition to the defendant Di Napoli's
24 motion to suppress the money, your Honor.

25 THE COURT: All right.

Mr. Lopez?

MR. LOPEZ: Your Honor, may I call Police Officer Reilly for one question on our case?

THE COURT: Is he around?

MR. LOPEZ: Yes, I think he is.

...

G E O R G E F. R E I L L Y, recalled by
defendant Di Napoli, testified further as follows:

THE COURT: Officer Reilly, do you recall yesterday you were sworn to tell the truth?

THE WITNESS: Yes, sir.

THE COURT: That still applies.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. LOPEZ:

Q Officer Reilly, as to the events on February 3rd, 1972, after both occupants of the vehicle, Papa and Di Napoli were placed under arrest, did you go to Varick Street?

A Yes.

Q Whom did you go with?

A I went with Special Agent Pallatroni and Mr. Papa.

Q Where did you sit in the car?

A I sat in the rear, on the passenger's side.

Spurdis-direct

Q And where did Papa sit?

A He sat next to me, on my left.

Q Was the valise, Government's Exhibit 1 and the money in the vehicle with you?

A It is my recollection that it was in the back seat.

Q The money was in the back seat?

A Correct.

MR. LOPEZ: Thank you very much. No further questions.

MR. PHILLIPS: I have no questions.

THE COURT: All right, Officer.

(Witness excused.)

THE COURT: Mr. Lopez?

MR. LOPEZ: Yes, your Honor. I call John Spurdis. He is outside. Will you call him in?

...

J O H N S P U R D I S, called as a witness

by defendant Di Napoli, having been first duly sworn, testified as follows:

MR. LOPEZ: Your Honor, most respectfully, may I have Defendant's Exhibits A and B. I think it's the search warrant and the complaint. I think they must be some place around here.

1 mp:mg 5

Spurdis - direct

2 (Documents handed to Mr. Lopez.)

3 DIRECT EXAMINATION

4 BY MR. LOPEZ:

5 Q Officer Spurdis, are you a police officer with
6 the City of New York?

7 A Yes, sir, I am.

8 Q And where are you presently assigned?

9 A The 50th Police Precinct.

10 Q And what are your duties there at the present
11 time?

12 A As a patrolman, uniform duty.

13 Q Now, on February 3rd, 1972, were you also with
14 the Police Department?

15 A Yes, sir.

16 Q And what were your duties then?

17 A I was a police detective, assigned to narcotics
18 investigations, New York Joint Task Force.

19 Q And how long had you been with the Joint Task
20 Force?

21 A From June 1st, 1971.

22 Q Until what date?

23 A Until November 16, 1973.

24 Q Now, while you were with the Joint Task Force at
25 the time of February 3rd, 1972, was a group supervisor,

1
2 Federal Agent Pallatroni, your immediate superior?

3 A Yes, sir, he was.

4 Q And were you preparing reports of your daily
5 activities or memorandums or any type of official communi-
6 cations and submitting them to Federal Agent Pallatroni?

7 A Yes. They are called BNDD-17's. They are dail
8 activity reports.

9 Q And were you submitting these on a daily basis?

10 A No, sir.

11 Q And how often would you submit these?

12 A Well, at times on a daily basis but mostly by
13 the week.

14 Q Right. And did you submit any reports in con-
15 nection with February 3rd, 1972?

16 A Yes, sir.

17 Q All right.

18 Now I refer you to September 3rd, 1971. Were
19 you at the Cottage Inn Bar located at 816 Van Nest Avenue,
20 Bronx, New York, at or about that time, September 3rd,
21 1971, if you recall, sir?

22 A Sir, what I would like to ask for is in regard t
23 that question, before I answer, there is a Pacchiano case,
24 CT-71-0-100. There's a full file in regards to that
25 case which has all the reports and if that's available, if

1
2 I could make reference to it --

3 Q You would like to refresh your recollection is
4 that correct?

5 A I certainly would, certainly as regards the dates
6 and places.

7 MR. LOPEZ: Your Honor, I will proceed with the
8 inquiry.

9 May the government be asked to produce that
10 file to refresh the witness' recollection? They are his
11 reports.

12 THE COURT: Mr. Phillips?

13 MR. PHILLIPS: Your Honor, we do have these
14 files with us and we have no objection to letting the wit-
15 ness look at them.

16 (Pause.)

17 MR. LOPEZ: Your Honor, may I make a suggestion,
18 if the Court please.

19 Mr. Richman will be called as a witness for the
20 defense in this matter. Perhaps we can give Officer
21 Spurdis a chance to review that file, and in the mean-
22 time call Mr. Richman as a witness at this time, in view
23 of the fact that he must have other court commitments and
24 engagements and then we can recall Spurdis, if your Honor
25 doesn't find that objectionable.

mp:mg 8

THE COURT: We are hardly into the testimony of Officer Spurdis. Why don't you go -- is the witness room empty?

MR. PHILLIPS: Yes.

THE COURT: You go into the witness room.

Mr. Clerk, will you take him into the witness room.

(Witness temporarily excused.)

MR. LOPEZ: Your Honor, may we call Mr. Richman to the stand, please.

...

MURRAY RICHMAN, called by the defense, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOPEZ:

Q Mr. Richman, you are an attorney and counsel-at-law licensed to practice in the State of New York?

A That is correct.

Q And you are in good standing?

A Yes.

Q And you are admitted to the bar of the Southern District of New York?

A Yes.

Q And you are admitted to the United States Court of Appeals for the Second Circuit?

A Yes.

Q And how long have you been an attorney?

A Going on ten years.

Q Okay.

Now, I call your attention to February 3rd, 1972; are you familiar with that date?

A I am.

Q Did you have occasion to go to 1908 Bronxdale Avenue in the Bronx, New York, on that date?

A Yes, I did.

Q And what place is this, if you can tell us?

A That was the house where to the best of my knowledge Joseph Di Napoli lived.

Q And who also lived in that house, if you know?

A Jean Gervasio.

Q And how many children did she have, if you recall?

A Three or four children.

THE COURT: You mentioned a lady's name, Gervasio. G-e-r-v-a-s-i-o.

Q Was she also known as Jean Patalano?

A I think so, yes. I don't know her as Jean

Pantalano.

Q Do you see her here in the courtroom?

A Yes, in the front row.

MR. LOPEZ: Would that person please identify herself? Would you come forward?

MRS. PATALANO: Jean Patalano, One Bloomingdale Drive, Scarsdale.

Q And this is the person that you refer to as residing on February 3, 1972 at that address, is that correct?

A That's correct, yes.

Q At what time did you arrive there?

A Approximately 7:30.

Q And what time did you leave, approximately?

A You know, I have testified to this before in other proceedings.

Q Yes, of course.

A I imagine somewhere between 8:30 and a quarter to 9:00.

Q All right. You weren't watching your watch or anything at that time; you are giving us your best approximation; isn't that correct, Mr. Richman?

A Yes.

Q You arrived there alone?

2 A Yes.

3 Q And you left alone?

4 A Yes.

5 Q And did you arrive with an attache case?

6 A Yes, the same attache case I walked into the
7 courtroom with.

8 Q And you departed with an attache case?

9 A Yes.

10 Q Now, there were a number of people in the house
11 at that time?

12 A Yes.

TGBan

1/10

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mpdl

Richman-direct

193

Q Was there anything, any special event happening at the time, anything special happening that caused your visit to 1908 Bronxdale Avenue?

A Several things caused my visit.

Q Will you please tell Judge Duffy what those several things were.

A Well, the first, the major reason that I was there, was to see Joseph Di Napoli's brother, Vincent, who was my client and was to be sentenced on February 15th of that year on another case which I represented him on, and I was there to discuss the sentence with him. I was there because I wanted to give a gift to Jean Patalano, on the birth of a baby. In addition to that, Joseph Di Napoli had spoken about purchasing a house at 1 Bloomingdale Drive, which he did purchase, and I was there to discuss that matter with him.

Q So you took advantage of this single visit to discuss these several matters with these people?

A Yes.

Q There came a time when you left the house?

A Yes.

Q And had you been at 1908 Bronxdale Avenue frequently?

A I had been there three or four times.

1
2 Q And you arrived there by car?

3 A Yes.

4 Q It was a vehicle registered to you?

5 A Yes. I think it was a '72 Pontiac, license
6 plate 176-MR.

7 Q And you left in that vehicle; is that correct?

8 A YES.

9 Q Now, where did you go and tell us the manner
10 you drove and the route which you followed.

11 A The manner in which I drove was my usual manner
12 of driving, which is not too good, and I have had numerous
13 accidents as a result of it, but on that particular day I
14 was informed by Mr. Higgins of the U. S. Attorney's office --
15 and I discussed this matter with him in October of this
16 year -- that I had made a U-turn when I left the house. I
17 was not aware that I made a U-turn and I went from there
18 to Bronx River Parkway, which would be my normal way of
19 going home, since I live in New City, New York, so I took
20 the Palisades Parkway. I took the Cross Bronx Expressway.
21 However, I made a stop at 225 East Cross Bronx Expressway.
22 So I went down Bronxdale Avenue to Bronx Park East, to the
23 Bronx River Parkway southbound, to the Cross Bronx Express-
24 way.

25 That's the best of my recollection.

Q Mr. Richman, in leaving the house at the time that you did and in taking the route that you took, was it your specific intention to take the heat off any specific surveillance at 1908 Bronxdale Avenue?

A No.

Q Did you know of any surveillance at 1908 Bronxdale?

A Definitely not.

Q Was this surveillance ever discussed with anyone at 1908 Bronxdale Avenue?

A Not that I know of, and, frankly, if I had known, I wouldn't have been there.

Q Now, you have gone down to the United States Attorney's office and voluntarily given them a statement as to your activities on February 3, 1972, have you not?

A I have had conversations with Walter Higgins of the United States Attorney's office about this matter.

Q And you have also had conversations with Mr. Phillips of the Special Prosecutor's office?

A I have voluntarily testified before the Grand Jury.

Q And you signed a waiver of immunity?

A I signed a waiver of immunity.

Q And you spoke to them at length concerning this

1
2 matter?

3 A Over an hour and a half, yes.

4 MR. LOPEZ: Thank you very much. No further
5 questions.

6 CROSS-EXAMINATION

7 BY MR. PHILLIPS:

8 Q Mr. Richman, when you left 1908 Bronxdale
9 Avenue, did you notice any surveillance?

10 A No. I never look for those things.

11 Q Now, did you then go north on Bronxdale Avenue?

12 A I really don't know. I went -- to the best of
13 my recollection, I went towards the Bronx River Parkway.
14 I was told by Mr. Higgins that I had made a U-turn. It
15 might have happened, but I don't know.

16 Q As you look back on it now, you know Bronxdale
17 Avenue, because you have been there a number of times; is
18 that correct?

19 A Yes.

20 Q As you look back upon it now, in which
21 direction did you start out after you got in your auto-
22 mobile?

23 A I really don't know. I don't know even on
24 which side of the street I was parked on.

25 Q So you don't know whether you went north, south,

1
2 east or west?

3 A In my mind I can't fix which is north or south.
4 To the best of my knowledge, Bronxdale Avenue runs east
5 and west.

6 Q In any event, you eventually arrived at the
7 Bronx River Parkway; is that correct?

8 A I think so. Yes. It would have to be.

9 Q Did you make any turns off Bronxdale Avenue
10 before you arrived at the Bronx River Parkway?

11 A I would have to. Bronxdale Avenue -- I would
12 have to cut into Bronx Park East under the el over there.
13 I don't think Bronxdale Avenue ends right there.

14 Q Was there sort of a loop that you had to get
15 onto to get onto the Bronx River Parkway?

16 A Yes.

17 Q And once you got on that loop, did you then
18 commence to go south on Bronx River Parkway?

19 A I would imagine, yes.

20 Q And how far did you travel?

21 A To the Cross Bronx Expressway.

22 Q And how far was it or is that?

23 A Two and a half miles -- two miles, about.

24 Q Did you then get off the Bronx River Parkway
25 and take a loop again?

1 A A loop, no. It's a -- yes, it's a loop. Yes;
2
3 I did. Get onto 174th Street and then the approach to the
4 Cross Bronx Expressway, yes.

5 Q And then you got onto the Cross Bronx Expressway;
6 is that correct?

7 A Westbound.

8 Q Westbound?

9 A Yes.

10 Q Did you not then get back onto the Bronx River
11 Parkway at any time?

12 A Not to my knowledge.

13 Q Are you sure about that?

14 A No. I'm not sure about that. I don't think so.
15 I don't understand why I would.

16 Q Well, didn't you get off the Bronx River
17 Parkway after you travelled south for a short distance,
18 perhaps for the two and a half miles that you mentioned,
19 and then get back on the Bronx River Parkway and head in the
20 opposite direction, north?

21 A I don't believe so.

22 Q Are you sure about that?

23 A I'm not, but I don't believe so.

24 Q Is it possible that you might have gotten headed
25 in the wrong direction that evening and then gotten back on

1 mpd7

Richman-cross

2 the Bronx River Parkway to head in the right direction?

3 A It was a very heavy rainfall that night,
4 extremely heavy, and the going was very rough. If you
5 recall -- if anybody was there, they would recall -- it
6 well over an inch and a half of rain that evening, and I
7 really don't fully recall exactly the method. I wasn't
8 going at a very fast rate at all.

9 Q I understand that, but is it possible that you
10 could have taken a wrong turn that evening?

11 A It could possibly have been. I doubt it.

12 Q Is it possible that you may have gotten mixed
13 up, either because of the rain or because of your lack of
14 knowledge of the area?

15 A The area I know.

16 Q The area you know. Is it possible that you
17 could have gotten mixed up then because of the rain and
18 headed in the wrong direction on one of these streets?

19 A It could have been. I don't think it's likely
20 but it could have been.

21 Q It's possible that you might have gotten headed
22 in the wrong direction --

23 MR. LOPEZ: I am going to object, your Honor.
24 Anything is possible.

25 THE WITNESS: The approach to get onto the

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4550

1 westbound Cross Bronx Expressway -- that's just a fork,
2
3 and going northbound on the Bronx River Parkway, if you
4 don't turn your wheel fast enough, or a car is coming to
5 your left, you can't go on the Cross Bronx; you're forced
6 to go back on the Bronx River Parkway at that juncture,
7 next to the Mobil or Esso station.

8 Q And had you ever missed that turn on any
9 occasion?

10 A Several occasions.

11 Q Can you recall specific instances when you
12 missed that turn?

13 A Not really.

14 Q Do you know whether or not you missed that
15 turn that evening?

16 A I don't believe I did, but I don't remember.

17 Q It is possible you might have, then?

18 A In fact, it was never raised before, this par-
19 ticular issue. Mr. Higgins, your associate, never
20 questioned me on that aspect. He said that I had made a
21 U-turn leaving 1903 Bronxdale Avenue.

22 Q And Mr. Higgins never asked you about this
23 aspect that I am asking you about now?

24 A No.

25 Q And did Mr. Phillips of the Special Prosecutor's

office ask you about this aspect?

A No.

Q This is the first time you have been asked about that since February 1972?

A That aspect with reference to getting back to the Bronx River Parkway?

Q Yes.

A Yes.

MR. PHILLIPS: I have nothing further.

MR. LOPEZ: No further questions.

(Witness excused.)

(In the robing room, Mr. Lopez, Mr. Walter Phillips, Mr. Curran and Mr. Richman present:)

THE COURT: Mr. Richman asked me when he turned around on the stand whether his testifying in this particular hearing would affect his credibility during the rest of the trial. The reason I excluded all the other attorneys except you, Mr. Lopez, is because I don't think it is necessarily a question for anybody except Mr. Richman and myself, but I felt that both sides ought to know what's going on.

As far as I am concerned, it won't affect his credibility one bit. The fact that he testified, what does that have to do with his representation of his client?

1
2 MR. RICHMAN: The question that arises in my
3 mind is that if this should come up during the trial and
4 I become a witness during the trial, my client cannot pos-
5 sibly get a fair trial, simply because of the fact that
6 his own attorney is participating in the trial --

7 THE COURT: The only person who would call
8 you is Mr. Lopez.

9 MR. RICHMAN: Mr. Lopez and I have a conflict
10 of interests, since we represent different clients. If
11 he should call me as a witness, I would be in a bind.

12 MR. LOPEZ: Let's suppose the most horrible
13 thing happens and your Honor denies the motion to suppress.
14 Then I might have to call Mr. Richman. But the issue of
15 probable cause wouldn't enter into it. This is how I feel
16 at the present time. Mr. Richman's testimony I think
17 maybe was necessary on the issue of suppression, but we
18 are certainly not going to have the type of testimony that
19 we had at the suppression hearing at the trial. Probable
20 cause will no longer be an issue, and therefore I don't
21 see that we would be calling Mr. Richman as far as that's
22 concerned.

23 MR. PHILLIPS: The government has no intention
24 of calling Mr. Richman.

25 THE COURT: I guess not. If you were going to

mpdll

call him, I think you would have made that known a long time ago.

MR. LOPEZ: I also feel that the governments proof, if they should do so would be merely to say that on February 3, 1972, a car was stopped, and this amount of money was found. I don't think they are going to go into surveillance or anything of the sort.

MR. PHILLIPS: We don't want to commit ourselves as to what we are going to establish. We represent that we will not call Mr. Richman at any time.

THE COURT: That's the problem.

MR. LOPEZ: The only thing I can say is that I have no intention of calling him. The only problem I may have is that if certain matters come up where his testimony becomes important -- but I don't think that will come up now, because probable cause --

THE COURT: Mr. Richman, I don't think you have any problem.

MR. RICHMAN: As long as your Honor advises me that I have no conflict, I will have no problem.

THE COURT: All right.

(Continued on page 204.)

Tk7am

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(In open court.)

THE COURT: Prior to the testimony of Mr. Murray Richman and the robing room conference with Mr. Richman and the United States Attorney and Mr. Lopez, John Spurdis had taken the stand and requested certain reports which he was to review.

He is in the witness room reviewing those reports.

Mr. Clerk, would you go in and ascertain whether he has finished his review?

(Pause.)

THE COURT: The clerk has come back from the witness room and advised me that the witness has not completed his review of the reports.

The time is now 12:21. As you know, we generally break at 12:30. You will all get a nine-minute extra lunch hour today.

Be back here at two o'clock sharp.

I must comment to both sides that while this morning we once again had snow, it was very noticeable to me people did not show up on time. I don't want a repeat performance.

You hear that, Mr. Phillips? Mr. Lopez?

MR. LOPEZ: Excuse me. Yes, your Honor.

1
2 I think we were here on time.

3 THE COURT: That wasn't my information.

4 MR. PHILLIPS: Your Honor, at two o'clock, as
5 I indicated on Monday at the pretrial conference, I have
6 arranged to make available those witnesses currently in
7 protective custody for defense counsel to interview them.

8 Perhaps we could commence at 2:15.

9 THE COURT: That doesn't sound like much of
10 an interview. I assume that these people are in the
11 building now. Is that correct?

12 MR. PHILLIPS: No, your Honor.

13 THE COURT: Let's commence at three o'clock
14 then. I have some reading to do.

15 By the way, is either side interested at this
16 point in handing up any authorities or would you like me
17 to -

18 MR. PHILLIPS: Your Honor, we have been spending
19 a fair amount of time attempting to prepare a memo on
20 this subject. However, we wanted to make sure that we
21 had contained in that memo all of the facts that were
22 elicited at the hearing.

23 We hope to and I think we will be able to get to
24 your Honor tomorrow the final draft of this memorandum of
25 law in support of our position.

1
2 THE COURT: All right.

3 Don't make it fancy. As I said, it is not
4 necessary.

5 MR. LOPEZ: We are in a like position, your Honor.
6 We have already drafted one. Again, we have to be bound
7 by the facts in the case. We will have some --

8 THE COURT: How about tomorrow morning? Can
9 you get it to me by tomorrow morning?

10 MR. LOPEZ: There may be only one problem, your
11 Honor, and that is that we may have to bring in, if your
12 Honor thinks it advisable and it will help him in his fact
13 determination of this case, the Pontiac people, because,
14 if I may make an offer of proof, I think we can establish
15 that Vincent Papa did not own a Mercedes on February 3,
16 1972, that he did in fact own a Pontiac, that it was under
17 repair, and that while his car was being repaired the
18 dealer loaned him another car.

19 Now, we can bring that testimony in if your
20 Honor considers it material, but we would need tomorrow
21 morning to do that. I don't want to belabor this thing,
22 but that would be a factor as far as the evidentiary hear-
23 ing is concerned.

24 THE COURT: Unless you get a stipulation
25 from the government, I think all factors which you feel

1
2 bear upon it should be brought out.

3 MR. LOPEZ: I don't know if the government
4 would give me that stipulation.

5 THE COURT: I don't know either.

6 MR. LOPEZ: I will ask Mr. Phillips.

7 THE COURT: All right.

8 I will see you gentlemen back here at three
9 o'clock.

10 (Luncheon recess.)
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AFTERNOON SESSION

3:00 p.m.

(In the robing room.)

(Mr. Rochman and Mr. Phillips present.)

THE COURT: Mr. Rochman, I understand you have an application.

MR. ROCHMAN: I do, your Honor.

I learned when I called my office that Mr. Frank Pellegrino whom I represent -- that his wife had called my office and told one of my secretaries that his son, who was being held in the New York City prison, the Tombs, on a charge unrelated to this, as I understand it, completely unrelated to this case, died this morning. I do not represent his son.

I called Mr. Pellegrino at home; I didn't speak with him; I spoke with his wife. She confirmed that that's what she had been told, that her son died this morning. She was griefstricken.

My application, Judge, is if it is at all possible to grant a severance with respect to Mr. Pellegrino and put the matter over to some future date.

I base the application -- it has two parts -- first because of what has happened, but I think what's happened will be considered by your Honor in light of the

fact that although Dr. Jaffe, who examined Mr. Pellegrino, jointly selected by the U. S. Attorney and myself, has indicated that he is fit to stand trial, I think he did corroborate the fact that Mr. Pellegrino at one time did have a heart condition, may still have some of the vestiges of that condition, although it is not serious enough to preclude his going to trial at this time.

That's really all I know about it, and that's what I make the application.

THE COURT: Mr. Phillips?

MR. PHILLIPS: Well, we oppose at this time a severance. What I would like to do, your Honor, is to be given a brief opportunity, later on this afternoon, when this hearing is completed, to consult with Mr. Curran and give your Honor a more definitive position. I would like to have a short opportunity to think the matter over.

THE COURT: Surely.

MR. PHILLIPS: And if we could have that, we will contact your Honor's chambers by late this afternoon.

THE COURT: Do you object?

MR. ROCHMAN: Of course not, Judge.

THE COURT: I think there are a couple of things, Mr. Phillips: One, I think you ought to confirm the fact that Frank Pellegrino's son is dead. I'm not saying anything

1
2 at all; you are reporting what you heard?

3 MR. ROCHMAN: Right.

4 THE COURT: I think it ought to be confirmed
5 in some way. And then you can form an opinion on the basis
6 of that.

7 As a practical matter, Mr. Rochman, I don't see
8 this case getting started on Monday.

9 MR. ROCHMAN: I see.

10 THE COURT: It may not be started next week.
11 There are a number of other applications kicking around,
12 and I truthfully thought that this one was going to be
13 very short.

14 MR. PHILLIPS: This hearing, your Honor?

15 THE COURT: This particular hearing that we are
16 involved in right now.

17 I thought the others would be, too.

18 So I will hear from you this afternoon, Mr. Phillips,
19 and, Mr. Delberian, you better get me back that letter
20 which I asked you to put in the file.

21 THE CLERK: I have it outside, your Honor.

22 THE COURT: I will take a look at that again.
23 Do you know the circumstances of the death?

24 MR. ROCHMAN: I know nothing, Judge, other than
25 what Mrs. Pellegrino told me when I spoke to her at twelve

noon.

That they were told he died of natural causes. They had told me on a previous occasion that the son was being held on a charge and I had in fact bumped into them by coincidence in the calendar part in the State Supreme Court about right after your Honor first assigned me in this case and she appeared to be genuinely griefstricken, besides that.

I think they told me that Arthur Bass, who represents the son in the State Court proceeding --

THE COURT: Is he in the case?

MR. PHILLIPS: He was originally in the case for Mr. Pellegrino, Senior, but he no longer is.

(In open court.)

J O H N S P U R D I S, resumed.

THE COURT: Officer Spurdis, you recall when you first came in this morning, before you went out to read the reports, you were placed under oath. That oath still continues; do you understand?

THE WITNESS: Yes, sir.

MR. LOPEZ: May I, sir?

THE COURT: Please do.

MR. PHILLIPS: May I interrupt a moment?

Do you have those reports?

THE WITNESS: No, sir. I returned them to the clerk.

DIRECT EXAMINATION

CONTINUED BY MR. LOPEZ:

Q Now, Officer Spurdis, you have had an opportunity to review those reports; isn't that correct?

A Yes, sir; I did.

Q Now, Officer Spurdis, around the first part of September, 1971, did you make any observations at the Cottage Inn involving a Facchiano?

A Sir, I went through all of those reports. I believe your first question pertained to September 1st?

Q Yes.

1 A And I found no reference to September 1st,
2
3 and I have no recollection as to September 1st.

4 Q How about any date following, the 2nd or 3rd
5 or 4th?

6 A September 3rd.

7 Q Right. Did you make any observations at the
8 Cottage Inn?

9 A Yes, sir; I did.

10 Q Will you kindly tell the Court what those
11 observations were, to your recollection?

12 A Early that evening or late afternoon of that
13 evening of September 3rd, myself and my partner, George
14 Reilly, and other members of the New York Joint Task Force
15 went to the Cottage Inn to make observations on Francis
16 Facchiano.

17 Q And did you in fact make any observations?

18 A Yes; I did.

19 Q What were those observations?

20 A I saw Mr. Facchiano arrive at the Cottage Inn
21 and enter the Cottage Inn. I went in, into the Cottage
22 Inn, and I seated myself at the bar, ordered a drink and
23 sat at the bar.

24 My best recollection is that there was no one
25 else in the bar but the bartender and a lady that was

1
2 leaving.

3 Q Well, was there any conversation that you over-
4 heard, Facchiano with a John Doe No. 3?

5 A There was a short period of time -- maybe I
6 had finished the first drink and ordered a second -- when
7 Mr. Facchiano came into the bar with a John Doe. We call
8 a person John Doe when we don't know who he is. He had
9 entered the bar with a John Doe and had walked past me,
10 had left the bar and had almost immediately re-entered the
11 bar. They walked to the back of the bar, and after a
12 short period of time, the John Doe and Mr. Facchiano left
13 the bar, had a brief conversation in front of the bar, and
14 then they departed.

15 THE COURT: May I ask: when you say "in front
16 of the bar," do you mean in front of the building in which
17 the bar was located or in front of the bar area of the bar
18 and grill?

19 THE WITNESS: On the street immediately in
20 front of the bar. There was a window there. This was
21 also, sir, where a John Doe No. 4, that I observed, was
22 brought into the case.

23 (Continued on next page.)
24
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Spurdis-direct

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Q Officer Spurdis, were you ever able to identify John Doe No. 3?

A Sir, in this case, in the Facchiano case, there were four John Does. There was, to the best of my recollection, one John Doe out of four that was identified, and that was Mr. George Rossi.

THE COURT: Was he John Doe No. 3?

THE WITNESS: No, sir, he was John Doe No. 4.

Q Was John Doe No. 3 ever identified?

A No, sir.

Q Would you recognize John Doe No. 3 if you saw him?

A I most certainly would.

Q Is Joseph Di Napoli John Doe No. 3?

A Most definitely not.

Q Is Vincent Papa John Doe No. 3?

A Most definitely not.

Q You reported this observation to your group supervisor, is that correct?

A I not only reported this observation to my group supervisor, but my group supervisor and other members of the New York Joint Task Force, including my partner, were immediately outside the Cottage Inn at that time or in the vicinity.

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Q Was the Facchiano case as you knew it, officer, and as you had investigated, ever related to Vincent Papa, as far as you knew?

A At no time, no time. The first time that Mr. Papa was brought into the Facchiano case was when I arrested Mr. Papa and Mr. Di Napoli on February 3rd of 1972. This was an independent arrest on my part and the part of my partner, George Reilly, and this arrest was put into the Facchiano case.

Q But as it originally commenced the Facchiano case then, as far as your investigations revealed, had nothing to do with either Papa or DiNapoli, is that correct, as you originally understood the case?

A To the best of my knowledge, from June 30th of 1971, when the Facchiano case was originated, and if it is still continuing, the only time Mr. Papa came into the case was on February 3, 1972.

Q Are you familiar, officer, with premises at 1908 Bronxdale Avenue in the Bronx?

A I have passed there many times and I had been in the premises one time.

Q Before February 3, 1972 were you ever at 1908 Bronxdale Avenue in the Bronx?

A Only from the outside making observations.

jhd3

Spurdis-direct

Q In which way was 1908 Bronxdale Avenue in the Bronx significant as far as the surveillance and the observations that you were making prior to February 3,

THE WITNESS: May I refer to a note, your Honor?

THE COURT: Refer to a what?

THE WITNESS: A note.

THE COURT: Sure.

A On August 6, 1971 I had been making observations at the Cottage Inn bar. There was a John Doe No. 1 that had made observations on that Mr. Facchiano had contact with in front of the bar. The John Doe No. 1 went into a car, license plate 1130 XS. That's a New York license plate. That was a blue Buick. That vehicle was registered to a Genevieve Patalano, who resided at 1908 Bronxdale Avenue.

Q This John Doe No. 1, are you able to recognize this individual?

A Only from the description of my notes.

Q Is this John Doe No. 1 either Vincent Papa or Joseph Di Napoli?

A Most definitely not.

Q But you do say that he was in a car which was registered to the name of Miss Patalano, who lived at 1908 Bronxdale Avenue, is that correct?

1
2 A Yes, sir.

3 Q What other factors of any importance was
4 1908 Bronxdale Avenue to you prior to February 3, 1972?

5 A Some time after that my partner had arrested a
6 Joseph De Benedetto. Now, in my undercover capacity working
7 at the Cottage Inn Joseph De Benedetto was either the owner
8 or manager or a combination at that bar.

9 When my partner had arrested him in the posses-
10 sion of a stolen vehicle he gave his address as 1908
11 Bronxdale Avenue.

12 Q But Joseph De Benedetto was not arrested in
13 connection with any narcotic activity?

14 A Not to my knowledge, no, sir.

15 Q Are there any other factors of any significance
16 involving 1908 Bronxdale Avenue prior to February 3, 1972?

17 A Not to my knowledge, no, sir.

18 Q Did you have any information, either yourself
19 personally or that you reported to your group supervisor,
20 fellow officers, that 1908 Bronxdale Avenue in the Bronx was
21 either being used as a stash for narcotics or was being
22 used as a place of narcotic operations?

23 A Nothing of that kind whatsoever.

24 Q Let's go to February 3, 1972. At around 6:00
25 p.m. in the afternoon or 6:30 did you have occasion to go

1
2 to Joint Task Force offices on Varick Street?

3 A At 4:00 p.m. or approximately 4:00 p.m. I met
4 my partner, George Reilly, at 201 Varick Street. We left
5 that office at approximately 5:30 p.m.

6 Q Excuse me. What is 201 Varick Street?

7 A That is the office of the Bureau of Narcotics
8 and Dangerous Drugs -- they have changed their name to
9 Drug Enforcement Administration -- and it was the office
10 of the New York Joint Task Force.

11 Q When you left that office, had you spoken with
12 anyone there, just prior to leaving?

13 A Yes.

14 Q Had you gotten an assignment?

15 A I spoke to many officers before. There were
16 some 200 of us assigned there.

17 THE COURT: Let me see if I can lead you a little
18 bit.

19 Mr. Lopez, I think what you are looking for is
20 did he speak with Agent Pallatroni.

21 MR. LOPEZ: Right.

22 THE WITNESS: Possibly.

23 Q Were you given any assignment for February 3,
24

25 A When I left that office I had in my possession
a John Doe warrant for John Doe No. 3 in this Pacchiano case

and I cannot say that Agent Pallatroni gave it to me. It may have been Sargeant Costanzo. I don't know.

Q Did Agent Pallatroni give you any specific assignment for that evening?

A Well, not to my recollection. It could have been my sub-supervisor, that is, Sargeant Alfred Costanzo, that had given it to me. I am not sure which.

But my assignment was -- I had in my possession a John Doe warrant and the warrant named a John Doe No. 3 and I was to arrest this John Doe No. 3 if I recognized him.

Q And where did you proceed?

A It was about 5:30 p.m. that evening that George and I left the office and we proceeded immediately to the Bronx.

Q Where did you go in the Bronx?

A We went to the V. Nest section of the Bronx, the Throgs Neck section of the Bronx, the East Tremont section of the Bronx, over to Pelham Bay. We made many stops at bars and grills and residences.

Q This was in an effort to execute a warrant against a person whose name you did not know but whose description you knew and you could identify, is that correct?

A I knew -- I personally knew and I believe that my fellow officers knew, because they were immediately out-

side the bar when I had made this observation.

Q Did there come a time when you came in the vicinity of 1908 Bronxdale Avenue?

A Yes, sir.

Q Would you explain about what time you got there?

A To the best of my recollection, it was 8:20 p.m. of that evening or 8:30 p.m. I am not very sure.

Q Did you go to 1908 Bronxdale Avenue or in that area for any specific purpose?

A It was just one stop that was made in the Van Nest, East Tremont, Throgs Neck section of the Bronx that we were patrolling.

Q There was no specific reason for going to 1908 Bronxdale, is that correct?

A Well, Joseph De Benedetto had given his address as there and he had immediately stopped there before my partner had stopped him at Pelham Bay Parkway and placed him under arrest with the stolen car. So it was a location that was to be looked after.

Q This De Benedetto, was he, as far as the Bureau is concerned, mostly associated with shylocking?

A Our work was specifically narcotics. If there was any shylocking negotiations going on between Mr. De Benedetto or anyone else, I personally was not aware

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of it, and I believe that no one else was aware of it.

Q When you got to the area of 1908 Bronxdale, did you make any observations? Did anything happen at that time?

A To the best of my recollection, it was 8:20 p.m. or between 8:20 and 8:30 p.m. when a vehicle pulled up in front -- I believe it was a small two-door Pontiac-- stopped in front of 1908 Bronxdale Avenue. A man left the vehicle and hurriedly ran into 1908 Bronxdale Avenue carrying a suitcase.

Q Did you recognize this individual?

A No, sir.

Q Was it night at this time?

A Yes, it was.

Q What were the weather conditions?

A You would have to be a scuba diver to look out the window.

I am sorry. I don't mean to be facetious. It was raining very, very hard. We had had the car in a stopped position and no windshield wipers on and looking out through the window the rain was coming down very heavy and to see anything at all, just to see a figure run into the house.

(Continued on page 223.)

2 Q Did you see if this man carried the valise with
3 one hand or with two hands, if you remember?

4 A Mr. Lopez, you are making me guess, and I would
5 say one hand.

6 Q Don't guess. If you don't know just tell me "I
7 really don't know."

8 You don't know or do you think you know?

9 A I say I think one hand.

10 Q Did you notice any other individual at that time
11 get out of that car?

12 A Not immediately. There was an operator of the
13 car.

14 Q And what did you see as far as this operator was
15 concerned?

16 A The operator of the vehicle, when he had stopped
17 I had started my vehicle. I was in the driver's position.

18 I pulled out from the parking space where I was
19 and the operator had already started moving. He went a
20 half a block, made a U turn, that is, coming the opposite
21 way from where he was, and I had already passed him.

22 I continued down to the Pine Tree Bar -- that's
23 a bar on the opposite side of the street of 1908 Bronxdale
24 Avenue -- where I made a U turn, and in coming back the
25 operator of the vehicle had parked his car on my side of

the street, that is, the side that I was proceeding on, and had gotten out of the vehicle and was in the process of walking across the street.

When I came abreast of the operator he was just in the middle of the street, on the yellow line.

Q Did you recognize this individual?

A I stopped the car, rolled down my window and looked out. It was Mr. Papa.

Q What did Mr. Papa do then?

A Mr. Papa looked at me.

Q And then did he proceed into 1908 Bronxdale?

A Yes, he did.

Q Were you at this time with your partner, Reilly?

A Yes, he was.

Q Were you doing the driving at this time?

A I was.

Q And as a result of this observation did you take any action?

A I continued down the street, made another U turn, and returned to the position I originally had, parked the car again, turned off the lights and the windshield wipers and the motor. I got on the radio and I called my group supervisor, Peter Pallantroni.

Q Excuse me. Was it Reilly or you that called up

1
2 the group supervisor?

3 A I did.

4 Q Is there any question in your mind about that?

5 A No, sir.

6 Q Then what happened? What did you tell the group
7 supervisor?

8 A I spoke to Agent Pallantroni and I told him that-
9 I gave him our location and I related to him what I had
10 just seen. I used the initials VP, not to give Mr. Papa's
11 name over the radio, and the reason for that was there was
12 an ongoing investigation in regards to Mr. Papa. So I
13 gave the initials VP was at 1908 Bronxdale Avenue.

14 Q You just mentioned an ongoing investigation re-
15 garding Vincent Papa?

16 A Yes, sir.

17 Q We are talking about February 3, 1972. Did
18 this ongoing investigation on Vincent Papa have anything
19 to do with 1908 Bronxdale?

20 A No.

21 Q Did it have anything to do with the Facchiano
22 case?

23 A No, sir.

24 Q Did it have anything to do with the execution
25 of the warrant against John Doe No. 3 or No. 1 that you had

on your person to execute that night?

A From --

THE COURT: Wait a second. Wasn't the John Doe No. 3, the warrant?

THE WITNESS: Yes.

THE COURT: All right.

Q John Doe No. 3.

A Sir, from July 30, when the Facchiano case was initiated, if it is still continuing, Mr. Papa did not come into it until February 3rd, when I arrested him.

Q As a result of that conversation with your group supervisor what is the next thing that happened?

A I had a little problem on the radio with him in regards to my making this observation as to how I could recognize Mr. Papa in this type of weather.

Q What was that conversation, what was that disagreement?

A My group supervisor and -

Q This is Pallatroni?

A -- Mr. Pallatroni and all other members of the Task Force from Group 2 were up on Magenta Street. That was the residence of George Rossi. They had an arrest warrant for George Rossi in regards to an observation that myself and George Reilly, my partner, had made previous at

1 Lydig Avenue and White Plains Road regarding a pass of
2 alleged narcotics between Mr. Facchiano and George Rossi.
3 So they had an arrest warrant for Mr. Rossi and they were
4 waiting for him up at his residence.
5

6 So when I called my supervisor, Agent Pallatroni,
7 to come down to 1908 Bronxdale Avenue I felt that he gave
8 me a hard time in regarding coming down there, as to why
9 I wanted him--

10 Q It was necessary --

11 A Why it was necessary, why I wanted him to come
12 down to Bronxdale Avenue from the-- that would be Gunhill
13 Road.

14 Q Did he disbelieve your observation of Vincent
15 Papa, is that it?

16 MR. PHILLIPS: Objection --

17 A That was the impression I got.

18 MR. PHILLIPS: -- to the working of Mr. Pallatroni
19 mind.

20 MR. LOPEZ: I will withdraw that, your Honor,
21 and I will phrase it another way.

22 THE COURT: All right.

23 Q Could you tell us in words exactly what the con-
24 versation was as best you can remember tween Pallatroni and
25 yourself?

1
2 A It won't be word for word, Mr. Lopez.

3 Q No, but give us the best recollection.

4 A I got on the radio. My call number was 207. I
5 called for 201, which was Agent Pallatroni.

6 When he answered the phone I told him what I had
7 observed.

8 Agent Pallatroni had said, "Are you sure" --

9 Q Could you talk up a little louder, please?

10 A I'm sorry.

11 Agent Pallatroni had queried me if I was sure that
12 that was VP.

13 First of all, he tried to clarify who VP was and
14 I believe that my response was the fellow that Jerry,
15 meaning Jerry Zappalo, a State police investigator, and Joe,
16 Joe Flannery, who is an agent for the Bureau of Narcotics
17 and Dangerous Drugs, and Charlie, Charlie Rinaldi, who is
18 a New York City patrolman, who was doing the active inves-
19 tigation in regards to Mr. Papa.

20 So after clarifying that he still queried me how
21 I could be so sure as to this was Vincent Papa, and it
22 went back and forth, one word into another, until I got
23 a little angry and I wouldn't answer him any more.

24 When I refused to answer the radio for his calls--
25 and I might say that this should be a matter of record at

the New York Joint Task Force.

Radio operators are required to keep a log of all radio transmissions.

When I turned around and I refused to answer the radio as for his continued queries it was 15 minutes later when Mr. Pallatroni and Mr. Reed, both agents, came down into the vicinity.

Q Did you have another conversation with Pallatroni or with Reed or with anyone else when Pallatroni came down?

A Yes, they did. I believe that when they first came into the area they pulled into Rhinelander Avenue or Rhinelander Street -- I am not sure of the name, but it is Rhinelander-- and we went on to Channel 1 -- that is a station that would not be monitored by base radio -- and I got out of the car and George Reilly became the operator.

I got out of the car and I went to Agent Pallatroni's vehicle and we had a long conversation as to what had taken place and what I had observed and what George had observed, George Reilly.

Agent Pallatroni asked if I wouldn't go into the back yard of 1908 Bronxdale Avenue and make some observations.

I did. I went through the driveway around the

1
2 back and tried to look into the rear windows, but on the
3 ground floor everything was dark, I couldn't see anything.

4 After being back there for several minutes I
5 thought I was doing a very stupid thing and I came back from
6 the back yard and went back to Agent Pallatroni, who was
7 down on Rhinelander Avenue, and told him so and said I would
8 not go back there again.

9 After speaking with Agent Pallatroni we made the
10 decision-- it was a mutual decision to sit and wait and
11 see what would happen.
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2 Q Well, what's the next thing that happened?

3 A I think it may have been 8:45 when it appeared
4 to be three females, three ladies, left 1908 Bronxdale Avenue
5 got into a car and drove away.

6 Q Nobody followed those ladies?

7 A No, sir.

8 Q What's the next event that happened?

9 A About 9:00 o'clock, one man, one gentleman left
10 the house, got into a vehicle. That vehicle was later identified
11 as belonging to Murray Richman, who I understand is
12 an attorney.

13 Agent Pallatroni and Agent Reed attempted to follow
14 that vehicle. They took it as far as the Cross-Bronx
15 Expressway and the Bronx River Parkway, where Agent
16 Pallatroni dropped off and returned back to the area that
17 he was in, Rhinelander Avenue and took up his position again.

18 Q And what is the next thing that happened after
19 that?

20 A Maybe five minutes later, two males left that
21 area and they departed. No one made any attempt to follow
22 either one of them.

23 Q And after that?

24 A I think the next -- I think the next thing that
25 happened was, about 9:30 p.m., when two males left 1908

1
2 Bronxdale Avenue, one carrying a suitcase, both of them
3 entered the vehicle that--

4 Q What vehicle?

5 A The vehicle that Mr. Papa had parked.

6 Q Did you recognize any of the males?

7 A They looked to be the same two who had gone into
8 the house originally.

9 Q So you were able to identify Vincent Papa, is
10 that correct?

11 A I made the identification of Vincent Papa in that
12 he was in the car after I had arrested him, and after he
13 went back to park the car-- when Mr. Papa went to park the
14 car when I first saw him in the middle of the street; that's
15 my first observation of Vincent Papa.

16 Q Now, when you made this observation at this point,
17 Officer, was Reilly with you at the time?

18 A Yes, sir, he was.

19 Q Were you both in the car?

20 A Yes, sir.

21 Q And who was at the driver's side?

22 A When the two males left the house with the suit-
23 case?

24 Q Yes.

25 A My partner, George Reilly.

2 Q And were you in the passenger's seat?

3 A Yes, sir.

4 Q Would you say that you were both in a position
5 make the observation?

6 A Yes, sir.

7 Q Now, the male that was carrying the suitcase,
8 could you see him?

9 A Yes, sir.

10 Q Could you see the manner in which he was carrying
11 the suitcase?

12 A He was hunched over.

13 Q How many hands did he have on the suitcase, that
14 you saw?

15 A I don't know.

16 Q Well, let me ask you this: As you think back,
17 and only if you remember, would you say he was carrying
18 the suitcase with one hand or with two hands?

19 A I don't know.

20 Q Did you hear or did you ever speak with your
21 partner, Reilly, as to the manner in which this unidenti-
22 fied male at the time was carrying the suitcase?

23 A Yes, sir, I have.

24 Q And what was that conversation?

25 A George's opinion was that the suitcase was

carried with two hands. My opinion was that I don't know.

Q I see.

Now, Officer, as a result of this observation, did you communicate again with Pallatroni or did Reilly communicate with him?

A Well, sitting in the passenger's seat I was taking the radio now, and I did say that two males had left the house and they were entering the same vehicle that they had come in.

Q In other words, you were in communication with Pallatroni, is that correct?

A Yes, sir.

Q Did Pallatroni at this time issue any order, make any suggestion or what was his reaction?

A Agent Pallatroni's reaction was-- not his reaction, but his communication to me was -- I remember it very specifically -- "What do you want to do?"

Q And what did you say to him?

A My opinion was "We are going to hit the car."

Q Well, did he ask you anything about hitting the car?

A He asked if I was sure that that's what I wanted to do.

Q And what did you tell him?

1
2 Is there any problem, Officer?

3 A There's ladies in the court.

4 THE COURT: It is all right. If they never
5 heard the words before, they won't know.

6 Q Let's hear the words, what was the conversation?
7 What was the exact conversation, as you recall? What
8 did you tell him and what did he tell you?

9 A Would it be all right if I just said it to the
10 judge?

11 Q No. State it for the record. There's no prob-
12 lem.

13 THE COURT: Say it for the record. Don't worry
14 about it.

15 A I said, "Fuck you, we are going to hit the car."

16 Q Is that what you told Pallatroni?

17 A Yes.

18 Q Well, what did Pallatroni say just previous to
19 that that provoked this response from you?

20 A I'm sorry. I didn't hear you, sir.

21 Q What was it that Pallatroni said previous to this
22 that provoked this reponse from you?

23 A I had been working for the New York Joint Task
24 Force for more than a year at that time. Federal agents
25 were restricted in making what police officers call jump

collars.

MR. PHILLIPS: Your Honor, I don't think that the answer is at all responsive to the question.

THE COURT: Well, let's see where it is going.

A That is, Federal agents were restricted to make what police officers would call jump collars, whereby if I felt that something was wrong with what was going on, I would stop a car, question a man and conduct a search. If there was nothing there, the man would be released or arrested.

Federal agents don't do this. So on this evening, with my supervisors in charge, his response was, "You do what you want, but I'm not going to take any responsibility for it."

Q Were those his words?

A This is the way I interpreted it, and this is why he got the response that I --

Q That you gave us previously?

A Yes.

Q Well, as a result of that response did you follow the Papa-Di Napoli vehicle?

A Yes, sir, I did.

Q Who followed first?

A I stayed in my position, which was approximately

one-half a block from 1908 Bronxdale Avenue, on the same side of the street. The moror was dead. The windshield wipers were dead. No lights on. Agent Pallatroni was sitting with Jamie Reed, Agent Reed, on Rhinelander Avenue.

We told him, that is, myself and Patrolan Reilly relayed the message to Agent Pallatroni and Agent Reed when the vehicle moved, that is, Mr. Papa's vehicle moved.

Mr. Papa's vehicle moved a half a block, made a U turn almost in front of us, with Agent Pallatroni right behind him. Mr. Papa continued down Bronxdale Avenue, past 1908 Bronxdale Avenue, executed another U turn, with Agent Pallatroni in back of him again and all this time I was sitting in our position. George Reilly was at the wheel, driving.

I told George, "Don't start the car. Don't put any power on, because if they see us move they will see ther two cars."

Mr. Papa executed a second U turn. At that time Agent Pallatroni and Agent Reed continued past Mr. Papa. Mr. Papa came then again past myself and Patrolman Reilly, continuing down Bronxdale Avenue. I believe that was eastbound. I'm not sure. They had gotten as far as past Morris Park Avenue before I had pulled out, that is, Patrolman Reilly had pulled out, because there was some

1 conversation between he and I, whether I should take the
2 wheel or not, being more experienced and I told George,
3 "You are all right, stay there."
4

5 George had pulled out, made a U turn and pursued
6 Mr. Papa and Mr. Di Napoli. They had gone underneath--
7 there's a-- I believe it's a railroad trestle there, when
8 you get down to the bottom of Bronxdale Avenue before you
9 hit East Tremont.

10 When we got d-wn there, there's an intersection
11 of Castle Hill Avenue, East Tremont, and the corner is
12 occupied by a church and a cemetery. I believe it is St.
13 Raymond's.

14 When we got to that area, we pulled up alongside
15 and I could see Mr. Papa was operating the vehicle.

16 Q All right.

17 Now, you pulled alongside, is that correct, and
18 Reilly was at the wheel?

19 A We stayed a little to the rear, yes, sir.

20 Q Reilly was at the wheel?

21 A Yes, sir.

22 Q You were in the passenger's seat?

23 A Yes, sir.

24 Q Were you closest to the Papa vehicle?

25 A Yes, sir.

Q Well, did you at any time see Reilly take out a badge and stick his arm out the window saying anything, "We are police officers, pull over," anything of that sort?

A No, sir.

Q But he was furthest away from the Papa vehicle, is that correct?

A George Reilly was driving the car that I was seated in.

Q Now, as you pulled alongside the Papa vehicle, what did you do?

A I showed my shield, which was a detective shield at the time, gold with blue in the center, and I had my pistol in hand, and I motioned to Mr. Papa.

I said, "Pull over to the side."

Q Did he pull over to the side?

A He looked over at me, and I said again, "Pull over to the side."

Mr. Di Napoli reached over and they seemed to have some kind of conversation or discrepancy there within the vehicle, and when I saw that taking place, I didn't know what was going to happen, and I said to George, "If they attempt to run, ram the vehicle."

I says, "Smack them with the car." In other words, to run our car into their car. I said, "Ram the

vehicle."

Mr. Papa then did pull into East Tremont Avenue in front of the cemetery. We pulled in front of him, and both of us got out of the car.

Q Now, as you got out of the car, did you have a gun?

A Yes, sir.

Q What kind of a gun did you have?

A Colt Government .45 automatic.

Q Well, is this the kind of a gun that you have to cock with two hands?

A It is an either way. I carried the pistol with a cartridge in the chamber, which would only need pulling the hammer back. I would not have to pull the slide back.

Q Well, did you pull the slide back on that day?

A No, sir.

Q All right.

As you came out of the vehicle, did you have the gun in your hand?

A Yes, sir.

Q All right.

What did you say and what did you do?

A Mr. Papa got out of the vehicle immediately and he approached myself and Patrolman Reilly.

1
2 To the best of my recollection, Mr. Papa said,
3 "What's going on?" Why did you stop me?" or "What did I
4 do?" whatever the conversation was, but I believe it was
5 basically that.

6 I immediately responded, "What is your name?"

7 He said, "Vincent Papa."

8 I said, "You are under arrest."

9 I turned to George, George Reilly, and I said,
10 "Do you have handcuffs?"

11 He said, "Yes."

12 I said, "Handcuff him."

13 Mr. Di Napoli went to get out of the car. Mr.
14 Di Napoli opened the door and he went to get out from
15 the passenger's side.

16 I put my pistol on him and I said, "Get back
17 into the car or I will kill you."

18 He got back into the car.

19 I said, "Put your hands on the dashboard."

20 He put his hands on the dashboard.

21 Now, there's a reason for this. I don't mean
22 to relate to the Court that I am a cruel person, a mean
23 person. The thing was there is only myself and George
24 there at the time. We had one person that we were hand-
25 cuffing and to have a second person running loose on the

1 the street, we had no idea who the second person was, who
2 could cause damage to either myself or George.

3
4 So I felt that I was taking a proper precaution
5 in making Mr. Di Napoli stay in the car with his hands on
6 the dashboard.

7
8 Now, it was several seconds later when Agent
9 Pallatroni and Agent Reed came down the hill, because they
10 had broken off from the surveillance when Mr. Papa had
11 made that second U turn.

12 Now, as soon as Agent Reed and Pallatroni came down
13 the hill, I went over to the vehicle and had Mr. Di Napoli
14 come out of the car, and he was taken into custody and
15 handcuffed also.
16
17
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25

2 Q Now, as both Papa and Di Napoli were secured,
3 did you effect a search of the vehicle?

4 A Yes, sir; I did.

5 Q All right. Tell us about that. What did you
6 find? What did you see?

7 A To the best of my recollection, it was a two-
8 door Pontiac, and I had to move the front seat forward, and
9 on the floor of the back of the car was a green-colored
10 zipper-type suitcase. I put it up onto the rear seat and
11 unzipped it. When I opened it up, it was full of money.

12 Q Well, what denominations?

13 A Large denominations. Agent Pallatroni
14 immediately came up to the back of me and said, "What do
15 we have?" And I think that was his exact words, "What do
16 we have?" And I said, "Money."

17 He said, "Well, how much?" I said, "About half
18 a million dollars," and he laughed --

19 Q You were estimating -- is that what you were
20 doing -- half a million dollars?

21 A Yes. I estimated. Agent Pallatroni gave us a
22 short laugh in regards to my estimation, and I said, "Pete,
23 it's not garbage," garbage being singles, fives, tens,
24 twenties, before it's changed into fifties or hundreds. I
25 said, "Pete, it's not garbage. It's all large bills."

1
2 So he said, "All right. Zipper it up and give
3 it to me" or "Close it up and give it to me," one or the
4 other.

5 I closed up the suitcase, which I believe was
6 a zipper type, and I gave it, I gave the suitcase to Agent
7 Pallatroni.

8 Q Did you see what he did with the suitcase?
9

10 A He put it in his vehicle.

11 Q In what part of his vehicle did he put it?

12 A He had a two-door car. He put it in the front
13 seat. Whatever he did with it afterwards --

14 Q Well, did you see him put it in the trunk of
15 the car?

16 A No, sir.

17 Q Then what did you do?

18 A I gave a cursory search of Mr. Papa's car,
19 that is, just to take a look around if someone had left a
20 pistol there, if there was a gun in there. I didn't see
21 anything. Agent Pallitroni came back to the car, and he
22 said, "Forget about it. We'll search it downtown." And
23 he says, "Take him," meaning Mr. Di Napoli, who I put in
24 my car, and who was handcuffed in the rear. I took him in
25 my vehicle, which was a government vehicle. Agent
Pallitroni had the money. My partner, George Reilly, and

Mr. Papa, they went down in one vehicle, and Agent Reed took the Pontiac down to the office, 201 Varick Street.

Q Well, were you given any instructions as far as filing for a search warrant and a complaint?

A I did fingerprint both defendants and some time after that, maybe 10:30 or 11:00 o'clock that evening, Agent Pallatrone, myself and an Assistant United States Attorney, we went up to Park Avenue to a private residence which was the residence of a United States Judge who signed a search warrant for 1908 Bronxdale Avenue.

Q And did you prepare the affidavit for that search warrant?

A I did.

Q Now, did you go with the search warrant to 1908 Bronxdale Avenue?

A To the best of my recollection, between 1:00 and 1:30 a.m. on the 4th.

Q And when you arrived there, were there already officers there?

A Yes, sir; there was.

Q And was a search of 1908 Bronxdale Avenue conducted?

A Yes, sir; there was.

Q And was any narcotics found there or any contra-

band or proofs of any crime or instrumentalities found on the premises?

A There was nothing illegal found, to my knowledge. Agent Pallatrone took a picture of Mr. Di Napoli because up until that time we didn't have a picture of Mr. Di Napoli, and now, arresting him, we had a picture of Mr. Di Napoli.

Q So actually this was the only thing seized from the house: a photograph of Mr. Di Napoli; is that correct?

A To my knowledge, yes.

Q All right. Now, in making a decision to hit the car on February 3rd of 1972, did you have any reasonable knowledge to believe that there was a crime afoot?

A That there was something illegal in the car?

Q Yes.

A I had no information to that effect; no, sir.

Q Would you describe your actions as taking a shot at the car?

A I reacted --

THE COURT: Is it required for him to describe his --

MR. LOPEZ: That is exactly what we are going to try to do, your Honor, because, after all, deciding to effect a search is a state of mind. He is making a decision.

THE COURT: All right.

Q In other words, what was your intention in stopping the car?

THE COURT: That's better.

Q (Continuing) What was the basis for it?

A To look into the suitcase.

Q In other words, you were curious?

A I wouldn't say curious. I would say acting on my experience as a police officer, that I felt that something may be wrong there.

Q But as far as the specific information, you didn't have any specific information; is that correct?

A There was no informant. There was no specific information. There was nothing observed, that is to say, no one was seen with a pistol or a glassine envelope or anything of that nature. If that's what you're trying to bring out, no, sir, there wasn't.

Q Well, was a factor in your consideration the fact that Vincent Papa was known to your bureau or believed to be involved in narcotics transactions? Was that a factor?

A That was the only factor.

Q And the second factor was the carrying of the suitcase; is that correct?

1 A Well, that would be secondary, because
2
3 Mr. Papa, as far as I could determine, did not bring the
4 suitcase in the house, but it was just Mr. Papa's presence
5 at the house that aroused my suspicions as a police officer
6 as to what he was doing there.

7 MR. LOPEZ: Your Honor, can we have just a
8 few minutes' recess so I can speak with co-counsel here?

9 THE COURT: Certainly. Ten minutes.

10 (Recess.)

11 THE COURT: Mr. Lopez, do you have any further
12 questions?

13 MR. LOPEZ: Yes. Several more, and I will be
14 finished, your Honor.

15 Q Officer Spurdis, previous to opening up the
16 suitcase found in the Papa - Di Napoli vehicle, did you
17 know what was in the bag?

18 A No, sir.

19 Q Did Agent Pallatroni tell you previous to the
20 search on February 3, 1972, that there either had to be
21 money or narcotics in that bag or suitcase?

22 A He did not.

23 Q Did Pallatroni ever tell you in any way, shape
24 or form to take the car, hit the car or stop the car?

25 A No, sir.

Q Before you even attempted to stop the car on February 3, 1972, as you began to drive alongside of it, did you then make up your mind to hit the car?

A Just previous to that.

Q At that time, as you got out of the car and hit the car, was it your intention to arrest the occupants?

A It was my intention to search the car.

Q Before searching the car, was it your intention to effect an arrest so that you could search the car?

A No, sir.

Q Did you in effect take out your gun as you exited from your car and point it at Vincent Papa?

A My pistol was in my hand before I exited the car.

Q Did you have your pistol in your hand as you exited the car?

A Yes, sir.

Q Did you point it at Vincent Papa as he came towards you?

A In a manner, yes, sir.

Q Did you tell Vincent Papa at that time, "You are under arrest"?

A Not until he stated his name.

Q Once he stated his name, did you say, "You are

under arrest"?

A Yes, sir; I did.

Q At that time, had you looked into the vehicle at all?

A No, sir.

Q What were you arresting Papa for at that time?

A Nothing.

Q Did you then go to Di Napoli?

A Mr. Di Napoli attempted to come to me.

Q And you put a gun on him and told him you would kill him if he got out of the car; is that correct?

A Yes, sir.

Q Did you place him under arrest?

A Not until I took him out of the vehicle, or allowed him to come out of the vehicle.

Q And was this prior to your search of the vehicle?

A Yes, sir.

Q You did place him under arrest at that time?

A When I said to Mr. Di Napoli, "Get out of the car, you are under arrest," that was when he was under arrest.

Q And what were you arresting him for at that time?

A Nothing.

Q All right. Now, Agent Spurdis, on February 3,

1972, you were a detective; is that correct?

A Yes, sir

Q What grade were you?

A Third grade.

Q And what is your present rank today?

A Police officer.

Q In other words, you have been demoted; is that correct?

A Yes, sir.

Q Now, previous to February 3, 1972, did you know Joseph Di Napoli?

A No, sir.

Q Did you know Vincent Papa personally?

A No, sir.

Q You just knew of him; is that correct?

A Reputation and had seen pictures of him.

Q After February 3, 1972, did you get to meet Joseph Di Napoli on several occasions?

A I did.

Q Was this while this case was still pending?

A There was no case pending when I met Mr. Di Napoli.

Q In other words, are you telling us that the complaint filed by you in the Southern District of New York

before the United States Magistrate had been dismissed?

A That's what I was told.

Q And who told you this, if you recall?

A Well, it must have come -- I would say from the group supervisor, Peter Pallatroni.

Q And after the complaint in this action was dismissed and there was no prosecution pending, did you strike an acquaintance with Joseph Di Napoli?

A Yes; I did. I had met him on several occasions.

Q And how many occasions?

A The maximum, seven or eight, or six to eight.

Q Will you tell Judge Duffy what was the purpose of your meetings with Joseph Di Napoli?

A I was attempting to turn him as an informant.

Q Did you ever meet, after February 3, 1972, with Vincent Papa?

A Yes, sir.

(Continued on page 253.)

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Q On how many occasions did you meet with Vincenzo Papa?

A Once.

Q And where was that?

A At his residence.

Q And what was the purpose of that?

A I served him with a subpoena, a federal subpoena.

Q At whose request did you serve him with a federal subpoena?

A At the request of the government.

Q As a result of your acquaintanceship with Joseph Di Napoli were you questioned by Internal Affairs of the New York City Police Department?

A Yes, sir, I was.

Q And was there a departmental trial in this matter?

A There was.

Q And will you tell us the findings as far as that departmental trial was concerned?

A There are none.

Q Excuse me?

A There are none.

Q Was there any action taken as far as that

departmental trial was concerned?

A My understanding was that Internal Affairs had filed a case as unfounded, and as for the department trial, Mr. Michaels, who is a Deputy Commissioner, had reserved decision on the hearing.

Q And has any final decision been made as far as you know?

A Not to my knowledge.

Q Did you have a conversation with Mr. Nadjari's office in connection with the activities of February 3, 1972?

A On several occasions.

Q And did you go there voluntarily?

A Yes, sir, I did.

Q And did you discuss the February 3, 1972 matter with Nadjari's office?

A That and others, other things, yes, sir.

Q Did you testify before the Grand Jury?

A I did not.

Q When you appeared before Mr. Nadjari's office did you do so voluntarily?

A I did.

Q Who did you speak with in Mr. Nadjari's office?

A Joseph Austin Phillips.

THE COURT: Is that one person?

THE WITNESS: Yes, sir, it is one person.

Q When you spoke with Joseph Austin Phillips you didn't have an attorney present, is that correct?

A That's correct.

Q And you spoke freely with him, is that right?

A I did.

MR. LOPEZ: Thank you very much, Officer.

No further questions.

CROSS-EXAMINATION

BY MR. PHILLIPS:

Q In connection with your appearance, Mr. Spurdis before the Special Prosecutor's Grand Jury, did you sign a waiver of immunity?

A I did not.

Q Did they ask you to sign a waiver of immunity?

A I was asked.

Q Did you refuse to sign a waiver of immunity?

A On the advice of Mrs. Nancy Rosner, who was my attorney at the time, I did not.

Q You understand, Mr. Spurdis, what probable cause means, don't you?

A I could say that I do, but if you would explain it to me, I would better understand it.

Q How long have you been a police officer?

1
2 A Some eleven years.

3 Q Did you have any type of training when you first
4 took this job?

5 A I did, some four months in the New York City
6 Police Academy.

7 Q At that time was anything with respect to
8 probable cause taught you or did you learn anything about
9 probable cause, the phrase probable cause?

10 A I can't say that I'd -- that it was specifically
11 taught to me, no.

12 Q You have no recollection of that?

13 A No, sir.

14 Q Did you have any training with respect to your
15 assignment with the New York Joint Task Force?

16 A There was bi-weekly training in regards to
17 corruption, in regards to federal forms, because New York
18 City policemen are not familiar with federal procedure.

19 Q You were a detective at that point, is that
20 correct?

21 A I had been a detective for almost seven years,
22 yes, sir.

23 Q And prior to becoming a detective, did you take
24 any examination to become a detective?

25 A No, sir. That was on merit.

1
2 Q You received no training then, with respect to
3 becoming a detective?

4 A No, sir.

5 Q In the eleven years since you have joined the
6 New York City Police Department you have not had any train-
7 ing with respect to the phrase probable cause or what it
8 means?

9 MR. LOPEZ: Your Honor, I am going to object.
10 I think the Supreme Court of the United States is having
11 trouble with probable cause and I think it would be some-
12 what difficult for Officer Spurdis to give us an explanatio
13 as to what is probable cause.

14 THE COURT: That is not the question.

15 The question is, do you have any training?

16 MR. LOPEZ: I have no objection to that
17 question, your Honor.

18 THE COURT: All right. I will permit the
19 question anyway.

20 Go ahead, answer the question.

21 A There has been conversation between myself and
22 others in regards to superior officers, that is, instruction
23 from superior officers, what would constitute probable cause
24 in making an arrest.

25 Q And you understand to make a legal arrest you

1
2 have to have probable cause that a crime is being committed,
3 isn't that correct?

4 A That's correct.

5 Q You understand that?

6 A I do.

7 Q And you understood that as of February 3, 1972?

8 A I did then and I do now, yes, sir.

9 Q Did you feel that you had probable cause to
10 make an arrest or to investigate what was in the suitcase?

11 A No, sir.

12 Q You did not feel you had probable cause on
13 February 3, 1972 to look into that suitcase?

14 A No, sir.

15 Q You feel you did not have probable cause to
16 believe that either a crime was being committed or that the
17 contents of the suitcase would involve the ocmmision of a
18 crime?

19 A No, sir.

20 Q I take it you did not feel you had probable
21 cause to stop the car, is that correct?

22 A That's correct.

23 Q Do you recall, Mr. Spurdis -- or is it Police
24 Officer Spurdis?

25 A Now it is Police Officer Spurdis.

Q You recall being questioned on October 8, 197
by Deputy Inspector Joseph Comperiati at 72 Poplar Street
in Brooklyn?

A I don't recall the date, but I was questioned
by that man, yes.

(Continued on page 259.)

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fol1.

Q At that time were you represented by Nancy Rosner?

A I was.

Q Was she present?

A I was down to see that man --

Q Was she present on October 8 when you were questioned by Inspector Comperiat?

A Mr. Phillips, I was down to that office on two occasions. One occasion Mrs. Rosner was not present. On the second occasion she was.

I am confused with the dates, so I don't want to say an exact yes or no for the date that you are saying. If you have some evidence there that Mrs. Rosner was present I will take your word for it.

MR. PHILLIPS: May this be marked as a government exhibit.

(Government Exhibit 3 marked for identification.)

MR. LOPEZ: Your Honor, may I have a chance to see that?

MR. PHILLIPS: I have not used it at all.

THE COURT: It hasn't be used. Let's see what happens with it.

Q You said you went to 72 Poplar Street twice, is that correct, Officer Spurdis?

1
2 A Yes, sir.

3 Q On each occasion were you questioned by Inspector
4 Comperiatì?

5 A No, sir. On one occasion.

6 Q You say you do not recall whether on that one
7 occasion Mrs. Rosner was present?

8 A It was the second occasion when Mrs. Rosner was
9 present. I am confused with the dates.

10 Q Let me show you Government Exhibit 3 for iden-
11 tification and see if that refreshes your recollection
12 as to whether or not the time that you were questioned by
13 Inspector Comperiatì Mrs. Rosner was present.

14 A Right. This is October 8, 1973 and it shows
15 that my attorney at that time, Nancy Rosner, was present,
16 yes.

17 Q Does that refresh your recollection then?

18 A Yes, sir, it does.

19 Q At that time were you asked questions about the
20 events that occurred on the evening of February 3, 1972?

21 A Yes, sir.

22 Q Isn't it a fact, specifically, you were asked,
23 Officer Spurdis, as to the circumstances surrounding the
24 arrest of Mr. Papa and Mr. Di Napoli?

25 THE WITNESS: Before I answer that question,

your Honor, may I address you?

THE COURT: Yes.

THE WITNESS: Okay.

THE COURT: Say it on the record.

THE WITNESS: When I was brought down to Internal Affairs Commission Division and I was questioned by this Inspector and the captain and my attorney was present I was informed by Police Department regulations that the questioning that was taking place could not or would not or in no way would be introduced into any court of law. Now, I don't know if you are familiar with Police Department procedure or if they lied to me or whatever else had taken place.

I just want to call this to your attention before Mr. Phillips continues with what he is going into.

MR. LOPEZ: Your Honor, may I be heard?

THE COURT: Yes, go ahead.

MR. LOPEZ: I have two requests. First of all, I would appreciate seeing Government Exhibit 3, and I ask that this session, it being past 4:30, in accordance with the ground rules, be adjourned until tomorrow, so that I can advise Miss Nancy Rosner to be here, in view of the area that we are entering into now.

MR. PHILLIPS: Your Honor, I object to this.

1 This is Mr. Lopez' witness who he called to
2 the witness stand.

3
4 MR. LOPEZ: Your Honor, it is 4:30 and I make a
5 point --

6 THE COURT: Hold on, would you, please?

7 MR. LOPEZ: Yes, sir.

8 THE COURT: I set the ground rules and I can
9 change them.

10 What I am interested in most of all, Mr. Lopez,
11 how much more of a case do you have to put in?

12 MR. LOPEZ: Not much more, your Honor, not much
13 more. I think we can be finished tomorrow morning.

14 THE COURT: I had hoped that this matter would
15 be a couple of hours and we are now well into the second
16 day, going to start the third day.

17 All right. We will adjourn until tomorrow morn-
18 ing. However, I want you back here at 10:15. I have
19 something to take care of at ten o'clock. I want to as-
20 sure you that I will expect the matter to be finished to-
21 morrow morning.

22 MR. LOPEZ: I hope so, too, your Honor.

23 MR. PHILLIPS: Your Honor, I would ask for a
24 direction from the Court that the witness be directed
25 not to speak with Mr. Lopez between now and the session

tomorrow morning.

MR. LOPEZ: Yes, your Honor. I will certainly obey that directive.

THE COURT: Sounds like I don't even need to give a direction. But you can have it so ordered.

THE WITNESS: Sir, would there be anything else that would hurry it up, to go around it?

THE COURT: No.

MR. LOPEZ: Your Honor, one request. Would it be possible for me to see Government Exhibit 3 now that he is going to refer to it?

THE COURT: I don't know. Are you going to read specific questions --

MR. PHILLIPS: I don't know that I am going to refer to it at all. It depends on the answers by the witness.

MR. DOWD: Mr. Phillips has presented it to the witness to refresh his recollection already. I think under those circumstances that the defense would be entitled to look at it.

THE COURT: Yes, you can look at the first page, if that is going to do you much good, because that is all that he showed him.

MR. ELLIS: Judge, what about the further

2 particulars?

3 THE COURT: I am trying to get to it. That is the
4 reason that I am leaving at this time. I could sit here
5 until six o'clock and finish this thing up.

6 MR. ELLIS: We also have the motion for a
7 severance, Judge.

8 THE COURT: I am aware of it.

9 (Adjourned to 10:15 a.m., January 11, 1974.)

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